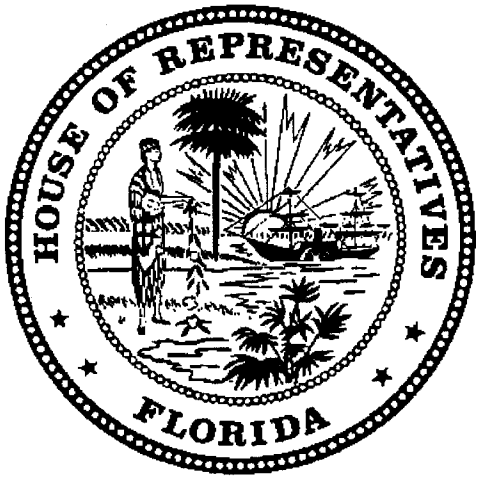

Transportation & Economic Development Appropriations Committee

Monday, April 17, 2006
3:00 p.m. – 4:00 p.m.
Reed Hall (102)

Allan G. Bense
Speaker

Don Davis
Chair

Florida House of Representatives

Fiscal Council
Committee on Transportation & Economic Development Appropriations

Allan G. Bense
Speaker

Don Davis
Chair

AGENDA
Transportation & Economic Development Appropriations
Monday, April 17, 2006
3:00 p.m. – 4:00 p.m. Reed Hall (102 EL)

I. Meeting Call to Order

II. Opening remarks by Chairman Davis

III. Consideration of the following bill(s):
HB 959 CS Motor Vehicle Safety Pilot Program by Roberson
HB 1115 CS South Florida Regional Transportation Authority by Greenstein
HB 1359 CS Hazard Mitigation for Coastal Redevelopment by Benson
HB 1467 CS Capital Formation by Grant
HB 7055 CS Enterprise Zones by Economic Development, Trade & Banking Committee
HB 7167 Growth Management by Growth Management Committee

IV. Closing Remarks & Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 959 CS Motor Vehicle Safety
SPONSOR(S): Roberson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1022 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	15 Y, 0 N, w/CS	Pugh	Miller
2) Local Government Council	7 Y, 0 N	DiVagno	Hamby
3) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

Public and private research on guard rails, cable barriers, clay berms, and other types of structural highway barriers indicates that, if properly placed and maintained, these systems improve the safety of public roads. The Federal Highway Administration, with assistance from the American Association of State Highway and Transportation Officials (AASHTO), other engineering associations, and state transportation agencies, continues to research and modify existing requirements for barrier systems.

The need for well-engineered guardrail and other highway barrier structures varies from state-to-state, as well as by the road's type, speed limit, and surrounding topographical features. One such feature common to Florida roadways is the location of natural water bodies, canals, or drainage ditches adjacent to highways.

National and statewide statistics for traffic fatalities caused by, or related to, the absence or failure of highway barrier systems and involving water are not readily available. However, the Florida Department of Transportation (FDOT) was able to collect specific data on traffic fatalities on the State Highway System involving vehicles submerged in water. In 2004, 28 fatal crashes occurred where the vehicles ran off the road and into an adjacent body of water in which 36 people died, including 20 whose deaths may have been caused by being submerged in water.

HB 959 CS requires that guardrails, retention cables, or other types of roadway barriers be installed, as part of a pilot project, along limited-access facilities in Miami-Dade County that are adjacent to canals or other water bodies. FDOT considers limited-access facilities to be part of the Florida Intrastate Highway System, which includes interstate highways and the Florida Turnpike. Roadways in existence on July 1, 2006, which are adjacent to water bodies, must have a barrier system installed by December 31, 2008. The barrier system must be installed and maintained by the appropriate governmental entity in compliance with FDOT standards established in rule. These standards must be designed to limit the loss of life by safely preventing an out-of-control motor vehicle from entering a canal or water body, based on a number of criteria. FDOT is directed to adopt rules to implement the provisions of this bill.

This bill would take effect July 1, 2006, and be repealed on December 31, 2011, unless reenacted by the Legislature.

HB 959 CS has an estimated $5.3 million fiscal impact on the State Transportation Trust Fund, according to FDOT, and already is included in the agency's Five-Year Work Program.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

HB 959 CS does not implicate any House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Federal Highway Administration research reports dating back to 1987 indicate the value of guardrail and other barrier systems in preventing traffic accidents and fatalities. These barrier systems can take many forms including metal guardrails, thick metal cables, concrete barricades, and earthen berms. To be effective barrier systems must be engineered to address a highway's particular features and the type of traffic that comprises the majority of use. The American Association of State Highway and Transportation Officials (AASHTO) has developed a number of nationally accepted standards for barrier systems for federal and state transportation agencies. These standards are continually being tested and updated.

The Florida Department of Transportation (FDOT) has an active highway-barrier installation program, installing more than 2,645.5 miles of guardrails along state highways and the Florida Turnpike and 552 miles of barrier walls. The Turnpike has committed that by 2007, guardrails will run the Turnpike's entire length, from Wildwood to Homestead. Typically the guardrails or cable systems are installed as part of a construction or maintenance project.

Florida has more highway accidents involving out-of-control vehicles veering off a highway into an adjacent canal, drainage ditch, or natural water body than any other state. National and statewide statistics for traffic fatalities caused by, or related to, the absence or failure of highway barrier systems and involving water are not readily available. However, FDOT was able to compile statistics on 2003 and 2004 traffic accident data involving vehicles running off state roads and into water bodies. FDOT staff verified the data by pulling the written reports and reading the narrative description of the accident. FDOT's review indicated that:

- In 2004, there were 28 fatal crashes on the State Highway System where the vehicles ran off the road and into an adjacent body of water. These crashes resulted in 36 fatalities, of which 20 were possibly caused or influenced by the vehicle being submerged.
- In 2003, there were 34 crashes where the vehicles ran off the road and into an adjacent body of water. These crashes resulted in 49 fatalities, 28 of which were possibly caused or influenced by the vehicle being submerged.

According to the accident reports, some of these accidents were caused by drunken, medicated, speeding, or careless drivers. The reports also show that in some accidents the vehicle went over, under, or through guardrails or fences before going into the water.

Effect of Proposed Changes

HB 959 CS requires, as a pilot project, each limited-access facility in Miami-Dade County that is adjacent to a canal or other water body to have a system of guard rails, barrier cables, or other barrier installed between the highway and the water body. The guardrail or barrier system must be installed and maintained pursuant to FDOT standards, which must be designed to protect against loss of life from out-of-control vehicles running off highways and into water. The standards should take into account such factors as the width, depth, or proximity of the water body to the highway. Limited-access facilities in existence on July 1, 2006, which are adjacent to water bodies, must have a barrier system installed by December 31, 2008, according to the bill.

Section 334.03(13), F.S., defines a "limited access facility" as:

"a street or highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility or for any other reason. Such highways or streets may be facilities from which trucks, buses, and other commercial vehicles are excluded; or they may be facilities open to use by all customary forms of street and highway traffic."

FDOT considers limited-access facilities to be part of the Florida Intrastate Highway System, which includes interstate highways and the Florida Turnpike. With this bill affecting only limited-access facilities, no county or municipal roads in Miami-Dade County would be subject to the pilot project's requirements.

FDOT is directed to adopt rules to implement the provisions of HB 959 CS, although it appears to have sufficient existing standards on guardrails and barrier systems based in part on national engineering standards.

HB 959 CS provides an effective date of July 1, 2006. The pilot project is repealed December 31, 2011, unless the Legislature reenacts it.

According to FDOT staff, the cost of implementing HB 959 CS is an estimated $5.3 million, which already is included in the FY 2006-2011 Five-Year Work Program.

C. SECTION DIRECTORY:

Section 1: Creates pilot project to install guardrail and other barriers on certain limited-access facilities in Miami-Dade County. Specifies requirements that must be met. Specifies deadline for completing installation. Provides for rule-making. Provides for future repeal.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   HB 959 CS has an estimated $5.3 million fiscal impact on the State Transportation Trust Fund, according to FDOT, and is already incorporated in the current Five-Year Work Program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None, according to FDOT.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 959 CS does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

HB 959 CS directs FDOT to adopt rules to implement the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Transportation Committee

At its March 27, 2006, meeting, the Transportation Committee adopted without objection a strike-all amendment from the bill's sponsor that limited the barrier-system requirement to limited-access highways (or certain state highways) adjacent to water bodies located only in Miami-Dade County as a pilot project.

This amendment eliminated the local unfunded mandate issues raised by the bill as originally filed, and reduced its fiscal impact on FDOT from $268 million to $5.3 million – which FDOT representatives said is already budgeted in the work program.

After adopting the main amendment, the committee voted 15-0 to report the bill as favorable with a committee substitute.

CHAMBER ACTION

The Transportation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to a motor vehicle safety pilot program; requiring certain limited access facilities that are adjacent to a canal or other water body to have a system of guardrails, retention cables, or other barriers between the highway and the canal or water body; providing for the Department of Transportation to establish certain standards governing the installation and maintenance of the barriers; requiring that barriers be installed for existing highways by a specified date; providing for future review and repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Barrier required between a highway and a canal or a water body.--

(1) Each limited access facility in Miami-Dade County that is adjacent to a canal or other water body must have a system of guardrails, retention cables, or other barriers between the

highway and the canal or water body which are installed and maintained in conformance with standards established by the Florida Department of Transportation. The standards should consider loss of life by safely preventing out-of-control motor vehicles from entering the canal or water body, as well as the width or depth of the canal or water body or its proximity to the traveled way of the highway.

(2) For a limited access facility in existence on July 1, 2006, the barriers required under this section must be installed on or before December 31, 2009.

(3) This pilot program shall stand repealed December 31, 2011, unless reviewed and saved from repeal through enactment by the Legislature.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1115 CS South Florida Regional Transportation Authority
SPONSOR(S): Greenstein
TIED BILLS: HB 1117 **IDEN./SIM. BILLS:** SB 2078 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	15 Y, 0 N, w/CS	Pugh	Miller
2) Local Government Council	7 Y, 0 N	Camechis	Hamby
3) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

The South Florida Regional Transportation Authority (Authority) was created in 2003 to broaden the scope of the old Tri-County Commuter Rail Authority (Tri-Rail) and to develop regional public-transit planning for Miami-Dade, Broward, and Palm Beach Counties. This bill makes a number of significant changes to the South Florida Regional Transportation Authority Act. Specifically, the bill:

- Provides that the state will not limit or alter the rights vested in the Authority to sell revenue bonds until all the bonds issued by the Authority are paid off and discharged.
- Clarifies the requirement that each of the three counties dedicate and transfer $2.67 million annually to the Authority for capital funding, as well as $4.2 million annually from each county for operating costs, by specifying that the funds must be dedicated prior to October 31 of each fiscal year.
- Deletes the provision allowing the three counties to collect a $2 fee on initial and renewal vehicle registrations within their boundaries upon approval by referendum.
- Specifies that at least $45 million of a state-authorized, local-option, recurring funding source available to Broward, Miami-Dade and Palm Beach counties must be directed to the Authority to fund capital, operating, and maintenance expenses. This funding may only be dedicated to the Authority if all three counties impose the local-option funding source.
- Eliminates the operating and capital funding contributions from the three counties when the proposed $45 million becomes available; however, those local contributions resume if the new funding ceases.
- Extends from December 31, 2009, to December 31, 2015, the date on which the local capital funding for the Authority ceases if no federal matching funds have been received.
- Deletes references to "commuter rail" to reflect the authority's broader transit mission.
- Provides the Authority an additional $7.9 million each year, in total, from Broward, Miami-Dade, and Palm Beach counties to pay operating expenses.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes: The bill eliminates the $2 fee on initial and renewal registrations of vehicles, which has not been implemented, in Broward, Miami-Dade, and Palm Beach Counties.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

In an attempt to ease the disruptions created for commuters while six-laning I-95 in the mid-1980s, the Florida Department of Transportation (FDOT) purchased an 81-mile rail corridor from CSX Transportation, Inc., (CSXT) for $264 million and began building a commuter train system. Under terms of the sale, CSXT continued to operate its freight trains in the corridor; maintain the tracks, buildings, and signaling; and dispatches all trains using the tracks. In 1989, the Legislature passed the Tri-County Commuter Rail Authority Act as Part 1 of Chapter 343, F.S., creating a commuter railroad to serve Miami-Dade, Broward, and Palm Beach counties.

In 2003, the Legislature enacted SB 686[1], which amended ch. 343, F.S., to reconfigure the Tri-Rail Commuter Rail Authority as the South Florida Regional Transportation Authority (the Authority). Supporters of the legislation said that a transportation authority, rather than a commuter rail system, would have a better opportunity to draw down federal matching dollars for public transit projects.

The Authority is empowered to construct, finance, and manage a variety of mass transit options, not just commuter rail, as an integrated system. It has numerous statutory powers and responsibilities, including the power to acquire, sell, and lease property; to exercise the power of eminent domain; to enter into purchasing agreements and other contracts; to enforce collection of system rates, fees, and other charges; and to approve revenue bonds issued on its behalf by the State Division of Bond Finance.

The Authority is governed by a nine-member board comprised of:

- A county commissioner from each of the three counties, selected by his or her peers;
- A citizen selected by each county commission who must live within the county he or she is representing, be a registered voter, and, insofar as practicable, represent civic and business interests of the community.
- One of the Florida Department of Transportation (FDOT) district secretaries who is responsible for one or more of the counties within the Authority's boundaries. That could be either the District 4 secretary (whose region includes Broward and Palm Beach counties) or the District 6 secretary (whose region includes Miami-Dade). At this time, the FDOT District 6 secretary serves on the Authority.
- Two citizens appointed by the governor who live in different counties within the Authority's jurisdiction but not the same county as the FDOT district secretary. They also must be registered voters.

The 2003 legislation also required each of the three counties served by the Authority to dedicate funding of $2.67 million annually, no later than August 1, 2003. The potential sources of this dedicated funding include:

- Local-option fuel taxes;

[1] ch. 2003-159, L.O.F.

- Each county's share of the local ninth-cent fuel tax;
- Proceeds of a $2 annual fee for registration or renewal of registration of each vehicle licensed in this state and registered in one of the three counties, if approved by a county referendum; or
- Other non-federal funds.

In addition, each county must provide annual funding of at least $1.565 million for operations. These local funding requirements are repealed if the Authority does not obtain federal matching funds by December 31, 2009. A fiscal analysis of the 2003 legislation indicated the $2 fee new and renewal registration fee would generate an estimated $8 annually for the Authority; however, the fees have not been imposed.

Meanwhile, the Authority is continuing to improve the existing commuter rail system with its 18 stations. Since 1995, the major project has been the $451-million "Double Track Corridor Improvement Program," which makes improvements to the existing 72-mile route and builds a second mainline track parallel to the existing track. About $334 million of the project cost has been funded by the Federal Highway Administration through direct grants; FDOT paid the rest. All but two miles of the double-tracking has been completed, and the Authority recently added additional trains and introduced new schedules that have trains leaving the stations every 20 minutes during morning and evening rush hours.

Last year, the commuter train system was averaging about 8,000 riders a day, but the near-completion of the double-tracking, plus better on-time reliability and more scheduled runs, has boosted daily ridership averages in 2006 to nearly 10,000, according to this bill's supporters.

The Authority continues to seek a significant dedicated funding source to complete the commuter train system and to implement its long-range transit plans. Dedicated funding is necessary for the Authority to issue revenue bonds in order to obtain federal transit grants that typically require a 50-50 match. Under the state's participation in the federal "New Starts" transit program, a local match of 25 percent is required, while the state provides the 25 percent and the federal government 50 percent.

EFFECT OF PROPOSED CHANGES

The bill makes a number of significant changes to the South Florida Regional Transportation Authority Act in ch. 343, F.S. These changes are briefly described as follows:

- Clarifies that the three counties must dedicate and transfer not less than $2.67million annually to the Authority for capital expenditures prior to October 31 of each fiscal year.
- Raises from $1.565 million annually to $4.2 million annually the amount of money each of the three counties must contribute to the Authority to pay its operating expenses, generating an additional $7.9 million annually for the Authority in operating funds.
- Deletes the $2 fee on initial and renewal vehicle registrations within the three-county area. The fee, which must be approved by voter referendum, has not been approved in any of the counties.
- Specifies that at least $45 million of a state-authorized, local-option, recurring funding source available to Broward, Miami-Dade, and Palm Beach Counties must be directed to the Authority to fund capital, operating, and maintenance expenses. This funding may only be dedicated to the Authority if all three counties impose it. A potential source of funding is the local-option rental-car surcharge which is the subject of other currently filed bills (HB 301 CS and SB 2632).
- Eliminates the operating and capital funding contributions from the three counties when the proposed $45 million becomes available, but those local contributions would resume if the new funding ceases.
- Specifies that the state will not limit or alter the rights vested in the Authority to sell revenue bonds until all the bonds issued by the Authority are paid off and discharged

- Extends by six years, to December 31, 2015, the date on which the local capital funding for the Authority ceases if no federal matching funds have been received. Section 343.58(1) , F.S., which specifies the local capital funding sources, is repealed under that circumstance.
- Deletes obsolete phrases and makes clarifying changes. Key among them is deleting references to "commuter rail," so that the Authority's broader area of responsibility is to plan, develop, operate, and fund a transit system. This reflects the Authority's plans to operate an integrated system of public transportation options.

C. SECTION DIRECTORY:

Section 1: Amends s. 343.54, F.S., to revise obsolete language.

Section 2: Amends s. 343.55, F.S., to provide that that state will not limit or alter this section related to Authority revenue bonds until all the bonds issued under this section are paid off and discharged.

Section 3: Amends s. 343.58, F.S., to modify timing of county contributions to the authority; deletes $2 initial and renewal registration fee for vehicles registered in the three counties; lays groundwork for Authority to receive certain, new local-option funding from the three counties; raises the counties' contributions to the Authority's operating expenses; provides for cessation and resumption of county contributions; extends repeal date to December 31, 2015 for county capital contributions.

Section 4: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

As a state entity, the Authority could receive an additional $7.9 million in operating funds each year because of the proposed increase in the current operating contributions made by the three counties, from $1.565 million annually to $4.2 million. In subsequent years, if HB 301 CS or SB 2632 creating a local-option rental-car surcharge becomes law, and Broward, Miami-Dade, and Palm Beach counties impose it, the Authority could receive at least $45 million a year for all of its expenses. If that occurs, the existing dedicated sources of funding the three counties contribute to the Authority would be repealed.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill increases from $1.565 million annually to $4.2 million annually the amount of money Broward, Miami-Dade, and Palm Beach Counties each must contribute to the Authority to pay its operating expenses. If HB 301 CS or SB 2632, which create a state-authorized local-option recurring funding source, becomes law and is implemented by the three counties, the existing dedicated sources of funding the three counties contribute to the Authority is repealed.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the Authority is successful in improving and promoting public transit in the three-county region, motorists and commercial carriers may benefit due to trips being diverted from the highways, and residents who do not drive may have access to more-affordable and dependable transportation.

D. FISCAL COMMENTS:

Section 3 of this bill includes a provision specifying, "At least $45 million of a state authorized, local-option recurring funding source available to Broward, Miami-Dade, and Palm Beach counties shall be directed to the authority to fund its capital, operating, and maintenance expenses. The funding source shall be dedicated to the authority only if Broward, Miami-Dade, and Palm Beach counties each impose the local-option funding source." The bill's supporters say their intent is to tap into revenues from a proposed local-option rental-car surcharge fee that is the subject of different legislation (HB 301 CS and SB 2632). They estimate that the $2-a-day surcharge on most car rentals would generate at least $48 million each year if imposed by the three counties.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill increases the amount of funding Miami-Dade, Broward and Palm Beach Counties must each contribute to the Authority by $2.635 million. The bill needs to include a statement of important state interest and have a two-thirds vote of the membership of each house.

3. Other:

None.

B. RULE-MAKING AUTHORITY:

The Authority is subject to ch. 120, F.S., but none of the provisions in the bill as currently drafted appear to require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its April 4, 2006, meeting, the Transportation Committee adopted without objection one amendment that replaced the original $50 million in annual recurring state funds directed to the Authority with the provision for a minimum $45 million, state-authorized, local-option, recurring funding source for the Authority if imposed by Broward, Miami-Dade, and Palm Beach counties. The committee then voted 15-0 in favor of the bill and reported it as a CS.

CHAMBER ACTION

The Transportation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the South Florida Regional Transportation Authority; amending s. 343.54, F.S.; revising language relating to powers and duties of the authority; deleting the term "commuter rail"; amending s. 343.55, F.S.; providing pledge to bondholders that the state will not alter certain rights vested in the authority that affect the rights of bondholders while bonds are outstanding; amending s. 343.58, F.S.; revising provisions for funding of the authority; requiring counties served by the authority to annually transfer certain funds before a certain date; removing provisions for sources of that funding; removing authorization for a vehicle registration tax; providing for a certain funding source for capital, operating, and maintenance expenses; revising county funding amounts to fund operations; providing for cessation of specified county funding contributions and providing for certain refunding of the contributions under certain circumstances; revising

timeframe for repeal of specified funding provisions under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) of section 343.54, Florida Statutes, is amended to read:

343.54 Powers and duties.--

(1)

(b) It is the express intention of this part that the authority be authorized to plan, develop, own, purchase, lease, or otherwise acquire, demolish, construct, improve, relocate, equip, repair, maintain, operate, and manage a transit system and transit facilities; to establish and determine the policies necessary for the best interest of the operation and promotion of a transit system; and to adopt rules necessary to govern the operation of a transit ~~commuter rail~~ system and transit ~~commuter rail~~ facilities. It is the intent of the Legislature that the South Florida Regional Transportation Authority shall have overall authority to coordinate, develop, and operate a regional transportation system within the area served.

Section 2. Subsection (4) is added to section 343.55, Florida Statutes, to read:

343.55 Issuance of revenue bonds.--

(4) The state pledges to and agrees with any person, firm, corporation, or federal or state agency subscribing to or acquiring the bonds to be issued by the authority for the purposes of the South Florida Regional Transportation Authority

Act that the state will not limit or alter the rights vested in the authority under this section until all bonds at any time issued and secured by revenues remitted to the authority pursuant to s. 343.58, together with the interest thereon, are fully paid and discharged, insofar as the same affects the rights of the holders of bonds issued under this section.

Section 3. Section 343.58, Florida Statutes, is amended to read:

343.58 County funding for the South Florida Regional Transportation Authority.--

(1) Each county served by the South Florida Regional Transportation Authority must dedicate and transfer not less than $2.67 million to the authority annually. The recurring annual $2.67 million must be dedicated by the governing body of each county prior to October 31 of each fiscal year ~~by August 1, 2003~~. ~~Notwithstanding ss. 206.41 and 206.87, such dedicated funding may come from each county's share of the ninth cent fuel tax, the local option fuel tax, or any other source of local gas taxes or other nonfederal funds available to the counties. In addition, the Legislature authorizes the levy of an annual license tax in the amount of $2 for the registration or renewal of registration of each vehicle taxed under s. 320.08 and registered in the area served by the South Florida Regional Transportation Authority. The annual license tax shall take effect in any county served by the authority upon approval by the residents in a county served by the authority. The annual license tax shall be levied and the Department of Highway Safety~~

~~and Motor Vehicles shall remit the proceeds each month from the tax to the South Florida Regional Transportation Authority.~~

(2) At least $45 million of a state-authorized, local-option recurring funding source available to Broward, Miami-Dade, and Palm Beach Counties shall be directed to the authority to fund its capital, operating, and maintenance expenses. The funding source shall be dedicated to the authority only if Broward, Miami-Dade, and Palm Beach Counties each impose the local-option funding source.

(3) ~~(2)~~ In addition, each county shall continue to annually fund the operations of the South Florida Regional Transportation Authority in an amount not less than $4.2 ~~$1.565~~ million. Revenue raised ~~Such funds~~ pursuant to this subsection shall also be considered a dedicated funding source.

(4) The current funding obligations under subsections (1) and (3) shall cease upon commencement of the collection of funding from the funding source under subsection (2). Should the funding under subsection (2) be discontinued for any reason, the funding obligations under subsections (1) and (3) shall resume when collection from the funding source under subsection (2) ceases. Payment by the counties will be on a pro rata basis the first year following cessation of the funding under subsection (2). The authority shall refund a pro rata share of the payments for the current fiscal year made pursuant to the current funding obligations under subsections (1) and (3) as soon as reasonably practicable after it begins to receive funds under subsection (2).

(5) If, by December 31, 2015 ~~2009~~, the South Florida Regional Transportation Authority has not received federal matching funds based upon the dedication of funds under subsection (1), subsection (1) shall be repealed.

Section 4. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1359 CS Hazard Mitigation for Coastal Redevelopment
SPONSOR(S): Benson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2216

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee	6 Y, 0 N, w/CS	Kliner	Kliner
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

The bill authorizes the Department of Environmental Protection (DEP) to revoke the authority for the emergency installation of a rigid coastal armoring structure by an agency, political subdivision, or municipality if such installation conflicts with certain public policies regarding adjacent properties, public access, or damage to vegetation or nesting turtle populations.

The bill defines Coastal High Hazard Area (CHHA), which is the area below the elevation of the category 1 storm surge line, and provides guidance for a local government that amends its comprehensive plan to increase population densities in a CHHA. The bill requires that the coastal management element of a local government's comprehensive plan contain a designation of a CHHA.

The bill provides a proposed comprehensive plan amendment must be in compliance with state coastal high hazard standards if the adopted level of service for out-of-county hurricane evacuation is maintained; or the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available; or appropriate mitigation will ensure that the level of service for out-of-county hurricane evacuation is maintained; or mitigation will ensure that the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available. Mitigation may not exceed the amount required for a developer to accommodate impacts reasonably attributable to the development, and must include the payment of money, and contribution of land and construction of hurricane shelters and transportation facilities. For those local governments that have not established a level of service for out of county hurricane evacuation by July 1, 2008, the level of service shall be no greater than 16 hours

The bill places a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area. Local governments must amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies buy July 1, 2008. The bill requires for the Division of Emergency Management to manage the update of regional hurricane evacuation studies.

The bill prohibits the Department of Health from issuing a construction or repair permit for onsite sewage treatment and disposal systems located seaward of the coastal construction control line without receipt of a permit from the Department of Environmental Protection.

The bill will not have a significant impact on state government or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government. The bill authorizes the Department of Environmental Protection (DEP) to revoke the authority for the emergency installation of a rigid coastal armoring structure by an agency, political subdivision, or municipality if such installation conflicts with certain public policies regarding adjacent properties, public access, or damage to vegetation or nesting turtle populations.

The bill directs local governments to amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies buy July 1, 2008.

The bill authorizes the Department of Health to contact the DEP prior to permitting work that may be performed on on-site sewage systems seaward of the Coastal Construction Control Line.

Safeguard individual liberty. The bill places a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Dune Armoring

Along with regulating construction along Florida's coastline, the DEP manages beach restoration projects to restore eroded shoreline in coordination with the federal and local governments. Subsequent maintenance of restored shorelines, referred to as nourishment, is also administered by the DEP.

Local governments are key players in beach management. All beach front communities are responsible for assuring compliance with zoning and building codes. Some play active roles in obtaining and maintaining beach access points, trash pickup and cleanup programs, dune vegetation regulation or maintenance, and water safety. Almost all counties, a number of cities, and several special districts now are involved in planning, implementing or maintaining a beach management activity such as inlet sand by-passing, beach restoration or dune restoration. The local government sponsor is responsible for planning the project, submitting information necessary to determine the priority of the proposal, obtaining necessary permits, bidding and contracting the work, and conducting subsequent monitoring.[1]

Federal agencies are involved in the regulation of beach activities through United States Army Corps of Engineers permits required for activities conducted seaward of mean high water, and through consultation required under the National Environmental Policy Act, the Endangered Species Act, the Marine Mammals Protection Act, and others. Typically, close coordination will take place with the National Marine Fisheries Service, the United States Fish and Wildlife Service, and the Environmental Protection Agency. Primary issues include provisions to protect sea turtles and shore birds, beach mice in those areas where they are still located, and Essential Fish Habitat.[2]

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[1] Department of Environmental Protection Report for the Governor's Coastal High Hazard Study Committee on Chapter 161, Florida Statutes -- December, 2005, page 3.

[2] Ibid.

The purpose of the Coastal Construction Control Line Program (CCCL) is to protect Florida's beaches and dunes while assuring reasonable use of private property. The Legislature initiated the CCCL Program to protect the coastal system from improperly sited and designed structures which can destabilize or destroy the beach and dune system. Once destabilized, the valuable natural resources are lost, as are its important values for recreation, upland property protection, and environmental habitat. Adoption of a coastal construction control line establishes an area of jurisdiction in which special site and design criteria are applied for construction and related activities. These standards may be more stringent than those already applied in the rest of the coastal building zone because of the greater forces expected to occur in the more seaward zone of the beach during a storm event.

Under emergency conditions, local governments may authorize temporary armoring to immediately protect public and private infrastructure like homes, utilities and roads if those structures are threatened. In order to consider the armoring permanent, the property owner must submit a complete (CCCL) permit application to the DEP within 60 days of installing the armoring. Otherwise, the property owner must remove the temporary armoring structure.

The DEP permits the installation of "dune stabilization or restoration structures" and "beach stabilization or regeneration structures" only in limited circumstances and as temporary systems in order to evaluate (1) the structure's effectiveness, (2) the structure's effect on adjacent properties, and (3) the structure's environmental impact on the beach and dune system. If erosion occurs as a result of a storm event which threatens private structures or public infrastructure, the DEP, a municipality, or another political subdivision may install or have installed rigid coastal armoring structures so long as the following measures are considered with the emergency armoring:

- Protection of the beach-dune system.
- Siting and design criteria for the protective structure
- Impacts on adjacent structures
- Preservation of public beach access
- Protection of native coastal vegetation and nesting marine turtles and their hatchlings.

Onsite Sewage Treatment and Disposal Systems

According to the Florida Department of Health, 31 percent of the population is served by estimated 2.3 million onsite sewage treatment and disposal systems (OSTDS). These systems discharge over 426 million gallons of treated effluent per day into the subsurface soil environment. [3]

Onsite sewage treatment and disposal systems are facilities constructed on individual sites used to provide wastewater disposal. Such systems usually consist of a septic tank and a subsurface infiltration system. Within the septic tank, sedimentation and some anaerobic digestion of solids occur. Septic tanks contain bacteria that grow best in oxygen-poor conditions. These bacteria carry out a portion of the treatment process by converting most solids into liquids and gases. Bacteria that require oxygen thrive in the drainfield and complete the treatment process begun in the septic tank. If the septic tank is working well, the remaining partially treated wastewater, referred to as septic tank effluent, which flows out of the tank may be relatively clear, although it still has an odor and may carry disease organisms. [4]

Section 381.0065, F.S., states it is the intent of the Legislature that where a publicly owned or Investor owned sewerage system is not available, the Department of Health (DOH) shall issue permits for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems. The section requires that a person may not perform any of these actions without first obtaining a permit from the department. In issuing onsite system (septic tank) permits, the DOH has no statute or rule that specifically addresses designated coastal high hazard areas or DEP-established coastal construction control lines (CCCL), both of which are established to protect Florida's coastal

[3] http://www.doh.state.fl.us/environment/ostds/intro.htm
[4] http://www.doh.state.fl.us/environment/OSTDS/pdfiles/forms/brochure.pdf

system and coastal infrastructure and private property. Section 381.0065(4), F.S., states that DOH "shall not make the issuance of such [septic tank] permits contingent upon prior approval" by DEP. Because DOH has no authority to enforce DEP's statutes or rules about location of facilities in the coastal zone and has no authority of its own in this regard, onsite systems are often permitted seaward of structures, where they are most vulnerable to damage from storm surges.

Coastal High Hazard Study Committee

On September 7, 2005, the Governor issued Executive Order 05-178, appointing members to the Coastal High Hazard Study Committee, which was charged with studying and formulating recommendations for managing growth in Coastal High Hazard Areas, defined as the Category 1 hurricane evacuation zones. The Committee was appointed to evaluate and make recommendations to resolve problems exposed by the extraordinary hurricane seasons in 2004 and 2005.

Regional Hurricane Evacuation Studies

Section 252.35, F.S., assigns responsibility to the Division of Emergency Management (DEM) to maintain a comprehensive statewide program of emergency management. The division is required to prepare a comprehensive emergency management plan that is operations oriented. The plan must include specific regional and interregional planning provisions and promote intergovernmental coordination of evacuation activities. The division has the capability to conduct regional hurricane evacuation studies. Such studies include a computerized model run by the National Hurricane Center to estimate storm surge depths and winds resulting from historical, hypothetical, or predicted hurricanes taking into account:

- Pressure
- Size
- Forward speed
- Track
- Winds

This model is known as SLOSH (Sea, Lake, and Overland Surges from Hurricanes). Calculations are applied to a specific locale's shoreline, incorporating the unique bay and river configurations, water depths, bridges, roads, and other physical features to estimate storm surge.[5]

Another model utilized by the Division is The Arbiter of Storms model or TAOS. The TAOS model is an integrated hazards model that provides data at a higher resolution than the SLOSH model does for surge. According to DEM, the TAOS model enhances the local government's ability to do effective hazard mitigation planning. Currently, SLOSH model storm surge calculations are not available at the same resolution statewide, or in a standard Geographical Information System (GIS) format. The TAOS model can perform calculations of storm hazard risk for the entire state at one time, and the results are available for addition to the GIS data base.

The SLOSH model calculates storm surge for an area of coastline called a basin. In order to provide complete coverage for the state's coastline, 11 separate SLOSH basins and models must be created and run. Unlike the SLOSH model which only calculates for storm surge, the TAOS model will also calculate an estimate of storm surge, wave height, maximum winds, inland flooding, debris and structural damage for the entire state at once. Furthermore, the model resolution for TAOS with respect to underwater and on-land data is much finer than for the SLOSH model. No computer model is perfectly accurate and calculations of storm surge from both TAOS and SLOSH contain some degree of uncertainty.[6]

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[5] http://www.nhc.noaa.gov/HAW2/english/surge/slosh_printer.shtml and http://www.floridadisaster.org/hurricane_aware/english/surge/x_slosh.htm

[6] http://www.floridadisaster.org/brm/lms/faq_taosslosh.htm

Periodic hurricane evacuation studies are required because of changing population dynamics. Populations and the existing transportation network define the speed with which an evacuation may be conducted. Regional hurricane evacuation studies are able to determine recommended timing intervals used to control a sequenced evacuation by locality.

Effects of Proposed Changes

The bill authorizes the Department of Environmental Protection (DEP) to revoke the authority for the emergency installation of a rigid coastal armoring structure by an agency, political subdivision, or municipality if such installation conflicts with certain public policies regarding adjacent properties, public access, or damage to vegetation or nesting turtle populations.

The bill defines Coastal High Hazard Area (CHHA), which is the area below the elevation of the category 1 storm surge line, and provides guidance for a local government that amends its comprehensive plan to increase population densities in a CHHA. The bill requires that the coastal management element of a local government's comprehensive plan contain a designation of a CHHA.

The bill provides a proposed comprehensive plan amendment must be in compliance with state coastal high hazard standards if the adopted level of service for out-of-county hurricane evacuation is maintained; or the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available; or appropriate mitigation will ensure that the level of service for out-of-county hurricane evacuation is maintained; or mitigation will ensure that the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available.

Mitigation may not exceed the amount required for a developer to accommodate impacts reasonably attributable to the development, and must include:

- Payment of money
- Contribution of land and construction of hurricane shelters and transportation facilities

For those local governments that have not established a level of service for out of county hurricane evacuation by July 1, 2008, the level of service may be no greater than 16 hours

The bill places a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area.

Local governments must amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies buy July 1, 2008.

The bill requires for the Division of Emergency Management to manage the update of regional hurricane evacuation studies.

The bill prohibits the Department of Health from issuing a construction or repair permit for onsite sewage treatment and disposal systems located seaward of the coastal construction control line without receipt of a permit from the Department of Environmental Protection.

C. SECTION DIRECTORY:

Section 1. Amends subsection (3) of s. 161.085, F.S., providing that unless authority has been revoked by the DEP, an agency, political subdivision, or municipality having jurisdiction over the impacted area may install or authorize installation of a rigid coastal armoring structure. The DEP may revoke such

authority if the DEP determines that the structure harms or interferes with the protection of the beach-dune system, adversely impacts adjacent properties, interferes with public beach access, or harms native coastal vegetation or nesting marine turtles or their hatchlings.

Sections 2 and 3. Amends paragraphs (d) and (h) of subsection (2) of section 163.3178, F.S. and adds subsection (9) to that section, to:

- Define Coastal High Hazard Area (CHHA), which is the area below the elevation of the category 1 storm surge line, and provides guidance for a local government that amends its comprehensive plan to increase population densities in a CHHA. The bill requires that the coastal management element of a local government's comprehensive plan contain a designation of a CHHA.

- Provide a proposed comprehensive plan amendment must be in compliance with state coastal high hazard standards if the adopted level of service for out-of-county hurricane evacuation is maintained; or the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available; or appropriate mitigation will ensure that the level of service for out-of-county hurricane evacuation is maintained; or mitigation will ensure that the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available.

- Limit mitigation so that such may not exceed the amount required for a developer to accommodate impacts reasonably attributable to the development. Mitigation must include:

    - Payment of money
    - Contribution of land and construction of hurricane shelters and transportation facilities

- Provide that for those local governments that have not established a level of service for out of county hurricane evacuation by July 1, 2008, the level of service shall be no greater than 16 hours

- Place a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area.

- Require local governments to amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies by July 1, 2008.

- Direct the Division of Emergency Management to manage the update of regional hurricane evacuation studies. Such studies must be done in a consistent manner and using the methodology for modeling storm surge that is used by the National Hurricane Center.

Section 4. Amends subsection (4) of section 381.0065, F.S., to require the Department of Health to be in receipt of a coastal construction control line permit issued by the Department of Environmental Protection before issuing a permit for work on an onsite sewage treatment and disposal system seaward of the coastal construction control line.

Section 5. The bill provides for an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Dune armoring: According to the DEP, the fiscal impact is indeterminate yet probably neutral overall. The legislation would save DEP staff resources and money expended on fixing the damage caused by improperly installed emergency armoring. Such armoring increases beach erosion and damages the beach and dune system, increasing the cost of restoration and recovery projects. The cost savings is impossible to estimate with any accuracy as the costs of beach recovery and restoration projects vary greatly depending on site-specific circumstances.

   The DOH reports no fiscal impact to the agency.

   Hurricane studies: The Division of Emergency Management currently conducts the type of studies required by this bill. Such studies are usually funded through federal sources and recurring state funding is not usually provided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   According to the DEP, there would be no fiscal impact on local governments that properly use their authority to install or authorize emergency armoring.

   Certain local governments may spend an indeterminate amount of time and resources to amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies by July 1, 2008. According to the Association of Counties, the expense is not considered to be substantial.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Improved assurance of proper coastal armoring will save private property by preventing coastal erosion, likely saving insurance as well as property repair and replacement costs. These savings could be substantial but are indeterminate.

Indeterminate savings could accrue to homeowners whose onsite sewage systems are not washed away during storms because better consideration is given to proper siting.

If an amendment to a local government comprehensive plan raises the population density within a coastal high hazard area, developers will need to provide mitigation options for on-site sheltering or transportation out of harms way.

The bill places a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Committee on Environmental Regulation approved a strike all amendment offered by the bill sponsor. The strike all differs from the bill as originally filed as follows.

The amendment defines Coastal High Hazard Area (CHHA), which is the area below the elevation of the category 1 storm surge line, and provides guidance for a local government that amends its comprehensive plan to increase population densities in a CHHA. The amendment requires that the coastal management element of a local government's comprehensive plan contain a designation of a CHHA.

The amendment provides a proposed comprehensive plan amendment must be in compliance with state coastal high hazard standards if the adopted level of service for out-of-county hurricane evacuation is maintained; or the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available; or appropriate mitigation will ensure that the level of service for out-of-county hurricane evacuation is maintained; or mitigation will ensure that the 12-hour evacuation time to a shelter is maintained and there is sufficient shelter space available.

Mitigation may not exceed the amount required for a developer to accommodate impacts reasonably attributable to the development, and must include:

- Payment of money
- Contribution of land and construction of hurricane shelters and transportation facilities

For those local governments that have not established a level of service for out of county hurricane evacuation by July 1, 2008, the level of service shall be no greater than 16 hours

The amendment places a moratorium on the construction of new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, mobile home parks, or nursing homes within the coastal high hazard area.

Local governments must amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies by July 1, 2008.

The amendment removes the provision in the original bill that required a real estate agent to disclosure that the property considered for purchase lies within a hurricane evacuation zone.

CHAMBER ACTION

The Environmental Regulation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to hazard mitigation for coastal redevelopment; amending s. 161.085, F.S.; specifying entities that are authorized to install or authorize installation of rigid coastal armoring structures; authorizing the Department of Environmental Protection to revoke certain authority; amending s. 163.3178, F.S.; defining the term "coastal high-hazard areas"; providing criteria for mitigation for certain comprehensive plan amendments; authorizing local governments to amend comprehensive plans to increase residential densities for certain properties; providing standards for certain comprehensive plan compliance; requiring local governments to adopt a certain level of service for out-of-county hurricane evacuation under certain circumstances; prohibiting new development of certain facilities in certain areas; providing a deadline for local governments to amend future land use maps; amending s. 163.3178, F.S.; requiring the Division of Emergency Management to manage

certain hurricane evacuation studies; requiring that such studies be performed in a specified manner; amending s. 381.0065, F.S.; requiring the issuance of certain permits by the Department of Health to be contingent upon the receipt of certain permits issued by the Department of Environmental Protection; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 161.085, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

161.085 Rigid coastal armoring structures.--

(3) If erosion occurs as a result of a storm event which threatens private structures or public infrastructure and a permit has not been issued pursuant to subsection (2), unless the authority has been revoked by order of the department pursuant to subsection (8), an ~~the~~ agency, political subdivision, or municipality having jurisdiction over the impacted area may install or authorize installation of rigid coastal armoring structures for the protection of private structures or public infrastructure, or take other measures to relieve the threat to private structures or public infrastructure as long as the following items are considered and incorporated into such emergency measures:

(a) Protection of the beach-dune system.

(b) Siting and design criteria for the protective structure.

(c) Impacts on adjacent properties.

(d) Preservation of public beach access.

(e) Protection of native coastal vegetation and nesting marine turtles and their hatchlings.

(8) If an agency, political subdivision, or municipality installs or authorizes installation of a rigid coastal armoring structure that does not comply with subsection (3), and if the department determines that the action harms or interferes with the protection of the beach-dune system, adversely impacts adjacent properties, interferes with public beach access, or harms native coastal vegetation or nesting marine turtles or their hatchlings, the department may revoke by order the authority of the agency, political subdivision, or municipality under subsection (3) to install or authorize the installation of rigid coastal armoring structures.

Section 2. Paragraph (h) of subsection (2) of section 163.3178, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

163.3178 Coastal management.--

(2) Each coastal management element required by s. 163.3177(6)(g) shall be based on studies, surveys, and data; be consistent with coastal resource plans prepared and adopted pursuant to general or special law; and contain:

(h) Designation of coastal high-hazard ~~coastal~~ areas and the criteria for mitigation for a comprehensive plan amendment in a coastal high-hazard area~~, which for uniformity and planning purposes herein, are defined as category 1 evacuation zones~~. The coastal high-hazard area is the area below the elevation of the

Category 1 storm surge line as established by a Sea, Lake and Overland Surges from Hurricanes (SLOSH) computerized storm surge model. The application for development ~~However, application of mitigation~~ and redevelopment policies, pursuant to s. 380.27(2), and any rules adopted thereunder, shall be at the discretion of local government.

(9)(a) A proposed comprehensive plan amendment shall be found in compliance with state coastal high-hazard standards pursuant to rules 9J-5.012(3)(b)(6) and 9J-5.012(3)(b)(7), Florida Administrative Code, if:

1. The adopted level of service for out-of-county hurricane evacuation is maintained; or

2. A 12-hour evacuation time to shelter is maintained and shelter space reasonably expected to accommodate the residents of the development contemplated by a proposed comprehensive plan amendment is available; or

3. Appropriate mitigation to satisfy the provisions of subparagraph 1. or subparagraph 2. is provided. Appropriate mitigation shall include, but not be limited to, payment of money, contribution of land, and construction of hurricane shelters and transportation facilities. Required mitigation shall not exceed the amount required for a developer to accommodate impacts reasonably attributable to its development.

(b) For those local governments that have not established a level of service for out-of-county hurricane evacuation by July 1, 2008, the level of service shall be no greater than 16 hours.

(c) No new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, or nursing homes shall be located within the coastal high-hazard area.

(d) This subsection shall become effective immediately and shall apply to all local governments. No later than July 1, 2008, local governments shall amend their future land use map and coastal management element to include the new definition of coastal high-hazard area, the coastal high-hazard map, and the appropriate mitigation strategies.

Section 3. Paragraph (d) of subsection (2) of section 163.3178, Florida Statutes, is amended to read:

163.3178 Coastal management.--

(2) Each coastal management element required by s. 163.3177(6)(g) shall be based on studies, surveys, and data; be consistent with coastal resource plans prepared and adopted pursuant to general or special law; and contain:

(d) A component which outlines principles for hazard mitigation and protection of human life against the effects of natural disaster, including population evacuation, which take into consideration the capability to safely evacuate the density of coastal population proposed in the future land use plan element in the event of an impending natural disaster. The Division of Emergency Management shall manage the update of the regional hurricane evacuation studies, ensure such studies are done in a consistent manner, and ensure that the methodology used for modeling storm surge is that used by the National Hurricane Center.

Section 4. Subsection (4) of section 381.0065, Florida Statutes, is amended to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.--

(4) PERMITS; INSTALLATION; AND CONDITIONS.--A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, but shall not make the issuance of such permits contingent upon prior approval by the Department of Environmental Protection, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the Department of Environmental Protection. A construction permit is valid for 18 months from the issuance date and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days from the date of issuance. An operating permit must be obtained prior to the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year from the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years from the date of issuance and must be

renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. There is no fee associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy

or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(a) Subdivisions and lots in which each lot has a minimum area of at least one-half acre and either a minimum dimension of 100 feet or a mean of at least 100 feet of the side bordering the street and the distance formed by a line parallel to the side bordering the street drawn between the two most distant points of the remainder of the lot may be developed with a water system regulated under s. 381.0062 and onsite sewage treatment and disposal systems, provided the projected daily sewage flow does not exceed an average of 1,500 gallons per acre per day, and provided satisfactory drinking water can be obtained and all distance and setback, soil condition, water table elevation, and other related requirements of this section and rules adopted under this section can be met.

(b) Subdivisions and lots using a public water system as defined in s. 403.852 may use onsite sewage treatment and disposal systems, provided there are no more than four lots per acre, provided the projected daily sewage flow does not exceed an average of 2,500 gallons per acre per day, and provided that all distance and setback, soil condition, water table elevation, and other related requirements that are generally applicable to the use of onsite sewage treatment and disposal systems are met.

(c) Notwithstanding the provisions of paragraphs (a) and (b), for subdivisions platted of record on or before October 1, 1991, when a developer or other appropriate entity has

previously made or makes provisions, including financial assurances or other commitments, acceptable to the Department of Health, that a central water system will be installed by a regulated public utility based on a density formula, private potable wells may be used with onsite sewage treatment and disposal systems until the agreed-upon densities are reached. The department may consider assurances filed with the Department of Business and Professional Regulation under chapter 498 in determining the adequacy of the financial assurance required by this paragraph. In a subdivision regulated by this paragraph, the average daily sewage flow may not exceed 2,500 gallons per acre per day. This section does not affect the validity of existing prior agreements. After October 1, 1991, the exception provided under this paragraph is not available to a developer or other appropriate entity.

(d) Paragraphs (a) and (b) do not apply to any proposed residential subdivision with more than 50 lots or to any proposed commercial subdivision with more than 5 lots where a publicly owned or investor-owned sewerage system is available. It is the intent of this paragraph not to allow development of additional proposed subdivisions in order to evade the requirements of this paragraph.

(e) Onsite sewage treatment and disposal systems must not be placed closer than:

1. Seventy-five feet from a private potable well.

2. Two hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of greater than 2,000 gallons per day.

3. One hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of less than or equal to 2,000 gallons per day.

4. Fifty feet from any nonpotable well.

5. Ten feet from any storm sewer pipe, to the maximum extent possible, but in no instance shall the setback be less than 5 feet.

6. Seventy-five feet from the mean high-water line of a tidally influenced surface water body.

7. Seventy-five feet from the mean annual flood line of a permanent nontidal surface water body.

8. Fifteen feet from the design high-water line of retention areas, detention areas, or swales designed to contain standing or flowing water for less than 72 hours after a rainfall or the design high-water level of normally dry drainage ditches or normally dry individual lot stormwater retention areas.

(f) Except as provided under paragraphs (e) and (t), no limitations shall be imposed by rule, relating to the distance between an onsite disposal system and any area that either permanently or temporarily has visible surface water.

(g) All provisions of this section and rules adopted under this section relating to soil condition, water table elevation, distance, and other setback requirements must be equally applied to all lots, with the following exceptions:

1. Any residential lot that was platted and recorded on or after January 1, 1972, or that is part of a residential subdivision that was approved by the appropriate permitting

agency on or after January 1, 1972, and that was eligible for an onsite sewage treatment and disposal system construction permit on the date of such platting and recording or approval shall be eligible for an onsite sewage treatment and disposal system construction permit, regardless of when the application for a permit is made. If rules in effect at the time the permit application is filed cannot be met, residential lots platted and recorded or approved on or after January 1, 1972, shall, to the maximum extent possible, comply with the rules in effect at the time the permit application is filed. At a minimum, however, those residential lots platted and recorded or approved on or after January 1, 1972, but before January 1, 1983, shall comply with those rules in effect on January 1, 1983, and those residential lots platted and recorded or approved on or after January 1, 1983, shall comply with those rules in effect at the time of such platting and recording or approval. In determining the maximum extent of compliance with current rules that is possible, the department shall allow structures and appurtenances thereto which were authorized at the time such lots were platted and recorded or approved.

2. Lots platted before 1972 are subject to a 50-foot minimum surface water setback and are not subject to lot size requirements. The projected daily flow for onsite sewage treatment and disposal systems for lots platted before 1972 may not exceed:

a. Two thousand five hundred gallons per acre per day for lots served by public water systems as defined in s. 403.852.

b. One thousand five hundred gallons per acre per day for lots served by water systems regulated under s. 381.0062.

(h)1. The department may grant variances in hardship cases which may be less restrictive than the provisions specified in this section. If a variance is granted and the onsite sewage treatment and disposal system construction permit has been issued, the variance may be transferred with the system construction permit, if the transferee files, within 60 days after the transfer of ownership, an amended construction permit application providing all corrected information and proof of ownership of the property and if the same variance would have been required for the new owner of the property as was originally granted to the original applicant for the variance. There is no fee associated with the processing of this supplemental information. A variance may not be granted under this section until the department is satisfied that:

a. The hardship was not caused intentionally by the action of the applicant;

b. No reasonable alternative, taking into consideration factors such as cost, exists for the treatment of the sewage; and

c. The discharge from the onsite sewage treatment and disposal system will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters.

Where soil conditions, water table elevation, and setback provisions are determined by the department to be satisfactory,

special consideration must be given to those lots platted before 1972.

2. The department shall appoint and staff a variance review and advisory committee, which shall meet monthly to recommend agency action on variance requests. The committee shall make its recommendations on variance requests at the meeting in which the application is scheduled for consideration, except for an extraordinary change in circumstances, the receipt of new information that raises new issues, or when the applicant requests an extension. The committee shall consider the criteria in subparagraph 1. in its recommended agency action on variance requests and shall also strive to allow property owners the full use of their land where possible. The committee consists of the following:

a. The Division Director for Environmental Health of the department or his or her designee.

b. A representative from the county health departments.

c. A representative from the home building industry recommended by the Florida Home Builders Association.

d. A representative from the septic tank industry recommended by the Florida Onsite Wastewater Association.

e. A representative from the Department of Environmental Protection.

f. A representative from the real estate industry who is also a developer in this state who develops lots using onsite sewage treatment and disposal systems, recommended by the Florida Association of Realtors.

g. A representative from the engineering profession recommended by the Florida Engineering Society.

Members shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members shall serve without remuneration, but if requested, shall be reimbursed for per diem and travel expenses as provided in s. 112.061.

(i) A construction permit may not be issued for an onsite sewage treatment and disposal system in any area zoned or used for industrial or manufacturing purposes, or its equivalent, where a publicly owned or investor-owned sewage treatment system is available, or where a likelihood exists that the system will receive toxic, hazardous, or industrial waste. An existing onsite sewage treatment and disposal system may be repaired if a publicly owned or investor-owned sewerage system is not available within 500 feet of the building sewer stub-out and if system construction and operation standards can be met. This paragraph does not require publicly owned or investor-owned sewerage treatment systems to accept anything other than domestic wastewater.

1. A building located in an area zoned or used for industrial or manufacturing purposes, or its equivalent, when such building is served by an onsite sewage treatment and disposal system, must not be occupied until the owner or tenant has obtained written approval from the department. The department shall not grant approval when the proposed use of the

system is to dispose of toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals.

2. Each person who owns or operates a business or facility in an area zoned or used for industrial or manufacturing purposes, or its equivalent, or who owns or operates a business that has the potential to generate toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals, and uses an onsite sewage treatment and disposal system that is installed on or after July 5, 1989, must obtain an annual system operating permit from the department. A person who owns or operates a business that uses an onsite sewage treatment and disposal system that was installed and approved before July 5, 1989, need not obtain a system operating permit. However, upon change of ownership or tenancy, the new owner or operator must notify the department of the change, and the new owner or operator must obtain an annual system operating permit, regardless of the date that the system was installed or approved.

3. The department shall periodically review and evaluate the continued use of onsite sewage treatment and disposal systems in areas zoned or used for industrial or manufacturing purposes, or its equivalent, and may require the collection and analyses of samples from within and around such systems. If the department finds that toxic or hazardous chemicals or toxic, hazardous, or industrial wastewater have been or are being disposed of through an onsite sewage treatment and disposal system, the department shall initiate enforcement actions against the owner or tenant to ensure adequate cleanup, treatment, and disposal.

(j) An onsite sewage treatment and disposal system for a single-family residence that is designed by a professional engineer registered in the state and certified by such engineer as complying with performance criteria adopted by the department must be approved by the department subject to the following:

1. The performance criteria applicable to engineer-designed systems must be limited to those necessary to ensure that such systems do not adversely affect the public health or significantly degrade the groundwater or surface water. Such performance criteria shall include consideration of the quality of system effluent, the proposed total sewage flow per acre, wastewater treatment capabilities of the natural or replaced soil, water quality classification of the potential surface-water-receiving body, and the structural and maintenance viability of the system for the treatment of domestic wastewater. However, performance criteria shall address only the performance of a system and not a system's design.

2. The technical review and advisory panel shall assist the department in the development of performance criteria applicable to engineer-designed systems.

3. A person electing to utilize an engineer-designed system shall, upon completion of the system design, submit such design, certified by a registered professional engineer, to the county health department. The county health department may utilize an outside consultant to review the engineer-designed system, with the actual cost of such review to be borne by the applicant. Within 5 working days after receiving an engineer-designed system permit application, the county health department

shall request additional information if the application is not complete. Within 15 working days after receiving a complete application for an engineer-designed system, the county health department either shall issue the permit or, if it determines that the system does not comply with the performance criteria, shall notify the applicant of that determination and refer the application to the department for a determination as to whether the system should be approved, disapproved, or approved with modification. The department engineer's determination shall prevail over the action of the county health department. The applicant shall be notified in writing of the department's determination and of the applicant's rights to pursue a variance or seek review under the provisions of chapter 120.

4. The owner of an engineer-designed performance-based system must maintain a current maintenance service agreement with a maintenance entity permitted by the department. The maintenance entity shall obtain a biennial system operating permit from the department for each system under service contract. The department shall inspect the system at least annually, or on such periodic basis as the fee collected permits, and may collect system-effluent samples if appropriate to determine compliance with the performance criteria. The fee for the biennial operating permit shall be collected beginning with the second year of system operation. The maintenance entity shall inspect each system at least twice each year and shall report quarterly to the department on the number of systems inspected and serviced.

5. If an engineer-designed system fails to properly function or fails to meet performance standards, the system shall be re-engineered, if necessary, to bring the system into compliance with the provisions of this section.

(k) An innovative system may be approved in conjunction with an engineer-designed site-specific system which is certified by the engineer to meet the performance-based criteria adopted by the department.

(l) For the Florida Keys, the department shall adopt a special rule for the construction, installation, modification, operation, repair, maintenance, and performance of onsite sewage treatment and disposal systems which considers the unique soil conditions and which considers water table elevations, densities, and setback requirements. On lots where a setback distance of 75 feet from surface waters, saltmarsh, and buttonwood association habitat areas cannot be met, an injection well, approved and permitted by the department, may be used for disposal of effluent from onsite sewage treatment and disposal systems.

(m) No product sold in the state for use in onsite sewage treatment and disposal systems may contain any substance in concentrations or amounts that would interfere with or prevent the successful operation of such system, or that would cause discharges from such systems to violate applicable water quality standards. The department shall publish criteria for products known or expected to meet the conditions of this paragraph. In the event a product does not meet such criteria, such product

may be sold if the manufacturer satisfactorily demonstrates to the department that the conditions of this paragraph are met.

(n) Evaluations for determining the seasonal high-water table elevations or the suitability of soils for the use of a new onsite sewage treatment and disposal system shall be performed by department personnel, professional engineers registered in the state, or such other persons with expertise, as defined by rule, in making such evaluations. Evaluations for determining mean annual flood lines shall be performed by those persons identified in paragraph (2)(i). The department shall accept evaluations submitted by professional engineers and such other persons as meet the expertise established by this section or by rule unless the department has a reasonable scientific basis for questioning the accuracy or completeness of the evaluation.

(o) The department shall appoint a research review and advisory committee, which shall meet at least semiannually. The committee shall advise the department on directions for new research, review and rank proposals for research contracts, and review draft research reports and make comments. The committee is comprised of:

1. A representative of the Division of Environmental Health of the Department of Health.

2. A representative from the septic tank industry.

3. A representative from the home building industry.

4. A representative from an environmental interest group.

5. A representative from the State University System, from a department knowledgeable about onsite sewage treatment and disposal systems.

6. A professional engineer registered in this state who has work experience in onsite sewage treatment and disposal systems.

7. A representative from the real estate profession.

8. A representative from the restaurant industry.

9. A consumer.

Members shall be appointed for a term of 3 years, with the appointments being staggered so that the terms of no more than four members expire in any one year. Members shall serve without remuneration, but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061.

(p) An application for an onsite sewage treatment and disposal system permit shall be completed in full, signed by the owner or the owner's authorized representative, or by a contractor licensed under chapter 489, and shall be accompanied by all required exhibits and fees. No specific documentation of property ownership shall be required as a prerequisite to the review of an application or the issuance of a permit. The issuance of a permit does not constitute determination by the department of property ownership.

(q) The department may not require any form of subdivision analysis of property by an owner, developer, or subdivider prior to submission of an application for an onsite sewage treatment and disposal system.

(r) Nothing in this section limits the power of a municipality or county to enforce other laws for the protection of the public health and safety.

(s) In the siting of onsite sewage treatment and disposal systems, including drainfields, shoulders, and slopes, guttering shall not be required on single-family residential dwelling units for systems located greater than 5 feet from the roof drip line of the house. If guttering is used on residential dwelling units, the downspouts shall be directed away from the drainfield.

(t) Notwithstanding the provisions of subparagraph (g)1., onsite sewage treatment and disposal systems located in floodways of the Suwannee and Aucilla Rivers must adhere to the following requirements:

1. The absorption surface of the drainfield shall not be subject to flooding based on 10-year flood elevations. Provided, however, for lots or parcels created by the subdivision of land in accordance with applicable local government regulations prior to January 17, 1990, if an applicant cannot construct a drainfield system with the absorption surface of the drainfield at an elevation equal to or above 10-year flood elevation, the department shall issue a permit for an onsite sewage treatment and disposal system within the 10-year floodplain of rivers, streams, and other bodies of flowing water if all of the following criteria are met:

a. The lot is at least one-half acre in size;

b. The bottom of the drainfield is at least 36 inches above the 2-year flood elevation; and

c. The applicant installs either: a waterless, incinerating, or organic waste composting toilet and a graywater system and drainfield in accordance with department rules; an aerobic treatment unit and drainfield in accordance with department rules; a system approved by the State Health Office that is capable of reducing effluent nitrate by at least 50 percent; or a system approved by the county health department pursuant to department rule other than a system using alternative drainfield materials. The United States Department of Agriculture Soil Conservation Service soil maps, State of Florida Water Management District data, and Federal Emergency Management Agency Flood Insurance maps are resources that shall be used to identify flood-prone areas.

2. The use of fill or mounding to elevate a drainfield system out of the 10-year floodplain of rivers, streams, or other bodies of flowing water shall not be permitted if such a system lies within a regulatory floodway of the Suwannee and Aucilla Rivers. In cases where the 10-year flood elevation does not coincide with the boundaries of the regulatory floodway, the regulatory floodway will be considered for the purposes of this subsection to extend at a minimum to the 10-year flood elevation.

(u) The owner of an aerobic treatment unit system shall maintain a current maintenance service agreement with an aerobic treatment unit maintenance entity permitted by the department. The maintenance entity shall obtain a system operating permit from the department for each aerobic treatment unit under service contract. The maintenance entity shall inspect each

aerobic treatment unit system at least twice each year and shall report quarterly to the department on the number of aerobic treatment unit systems inspected and serviced. The owner shall allow the department to inspect during reasonable hours each aerobic treatment unit system at least annually, and such inspection may include collection and analysis of system-effluent samples for performance criteria established by rule of the department.

(v) The department may require the submission of detailed system construction plans that are prepared by a professional engineer registered in this state. The department shall establish by rule criteria for determining when such a submission is required.

Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1467 CS Capital Formation
SPONSOR(S): Grant and others
TIED BILLS: HB 1469 **IDEN./SIM. BILLS:** SB 2668

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	10 Y, 0 N, w/CS	Olmedillo	Carlson
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

This bill creates the Florida Capital Formation Act (Act), which is designed to increase the amount of venture capital investment in Florida by attracting early stage venture capital for emerging companies. The bill creates the following:

- **Florida Capital Investment Trust**, a state beneficiary public trust to hold contingent tax credits as a guarantee for investments made under the Act. Tax credits may only reduce tax liabilities for sales and use tax, corporate income tax, insurance premium tax and tax on wet marine and transportation insurance.
- **The Florida Opportunity Fund Management Corporation**, a non-profit corporation, which will organize the Florida Opportunity Fund, select an early stage venture capital investment fund allocation manager and manage the business affairs of the Florida Opportunity Fund.
- **The Florida Opportunity Fund,** which shall invest on a funds-of-funds basis emphasizing investment in seed capital and early stage venture capital funds focusing on opportunities in Florida.

The bill appropriates $750,000, for fiscal year 2006-2007 from the General Revenue Fund to the Florida Capital Investment Trust to be used for startup activities. The bill also reserves $75 million in tax credits as a guarantee of investments made under the Act.

This bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government -- The bill creates the Florida Capital Investment Trust, the Florida Opportunity Fund Management Corporation, and the Florida Opportunity Fund. The bill provides the Department of Revenue (DOR) rule making authority to implement provisions of this Act.

The bill appropriates $750,000, for the fiscal year 2006-2007, from the General Revenue Fund to the Florida Capital Investment Trust to be used for startup activities necessary to implement the provisions of this Act.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

THE VENTURE CAPITAL INDUSTRY– AN OVERVIEW

Venture capital is money provided by professionals who invest alongside management in young, rapidly growing companies that have the potential to develop into significant economic contributors. Venture capital is an important source of equity for startup companies.[1]

Venture capitalists generally:

- finance new and rapidly growing companies;
- purchase equity securities;
- assist in the development of new products or services;
- add value to the company through active participation;
- take higher risks with the expectation of higher rewards; and
- have a long-term orientation.[2]

Venture capitalists actively work with the company's management by contributing their experience and business savvy gained from helping other companies with similar growth challenges.

Venture capitalists mitigate the risk of venture investing by developing a portfolio of young companies in a single venture fund. A venture capitalist may invest before there is a real product or company organized (so called "seed investing"), or may provide capital to a company in its first or second stages of development known as "early stage investing."

Some organizations may include government affiliated investment programs that help startup companies either through state, local or federal programs. One common vehicle is the Small Business Investment Company or SBIC program administered by the Small Business Administration, in which a venture capital firm may augment its own funds with federal funds and leverage its investment in qualified investee companies.

Term of Investment

Depending on the investment focus and strategy of the venture firm, it will seek to exit the investment in the portfolio company within three to five years of the initial investment. While the initial public offering may be the most glamorous and heralded type of exit for the venture capitalist and owners of the company, most successful exits of venture investments occur through a merger or acquisition of the company by either the original founders or another company.

Management Fees

[1] Available at http://www.nvca.org/def.html, last viewed March 27, 2006.
[2] Id.

As an investment manager, the general partner will typically charge a management fee to cover the costs of managing the committed capital.

STATE VENTURE CAPITAL IN FLORIDA

Venture capital refers to the early-stage financing of new companies with high growth potential. Venture capital investments typically have several characteristics, including an investment in a start-up or expansion-oriented company that has a higher level of risk than is typically associated with traditional bank lending activities; equity participation in the business by the venture capitalist; long-term investments with a 5- to 10-year time horizon; and an established mechanism for the payout of the venture capitalist at the end of that time period.[3]

Enterprise Florida, Inc. (EFI) reports that in Florida, total venture capital spending was more than $555 million for 114 deals in 2003 and 2004.[4] The EFI website lists 27 venture capital firms that have headquarters in Florida.[5]

EFI also reports that since the late 1990's, venture capital investment in Florida has fallen sharply both in absolute dollar terms and as a share of the U.S. total. Despite being the 4th most populous state, Florida ranks 13th in the U.S. in terms of venture capital investment in 2004. In 2004 Florida accounted for only $300 million, or 1.42% of the total venture capital funding in the U.S. [6]

State Investments in Venture Capital

Over the past decade, a number of states have adopted programs targeting the formal venture capital industry.[7] These programs include:

- Government-funded and managed venture capital funds (VCFs);
- Requiring public-sector pension funds to make venture capital investments (either directly or through VCFs);
- Tax credits for private investment in VCFs; and
- Government investment or government-guaranteed investment in private VCFs.[8]

Effects of Proposed Changes:

This bill creates the Florida Capital Formation Act (Act), and provides legislative findings and intent relating to the Act.

Definitions

The bill provides the following definitions:

- "Board" means the board of trustees of the Florida Capital Investment Trust.
- "Certificate" means a contract between the trust and a designated investor evidencing the terms of a guarantee or incentive granted to a designated investor.
- "Corporation" means the Florida Opportunity Fund Management Corporation created under the bill.
- "Designated investor" means a person, other than the board, who purchases an equity interest in the Florida Opportunity Fund or is a party to a certificate or who is a lender to the Florida Opportunity Fund and is a party to a certificate.

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[3] OPPAGA Report on the Cypress Equity Fund, Report No. 98-33. For more information, see the National Venture Capital Association (NVCA) website at http://www.nvca.org/def.html. The NVCA is a trade association that represents the U.S. venture capital industry. It is a member-based organization, which consists of venture capital firms that manage pools of risk equity capital designated to be invested in high growth companies.

[4] http://www.eflorida.com/businessadvantages/1/venturecapital.asp?level1=29&level2=159

[5] Id.

[6] Enterprise Florida, Inc.

[7] EFI reports that 39 states have adopted programs to deliver or facilitate the formation of local seed and venture capital resources. Id. at 3.

[8] See Daniel Sandler, *State Venture Capital Programs*, and *Venture Capital and Tax Incentives: A Comparative Study of Canada and the United States* (Toronto: Canadian Tax Foundation, 2004).

- "Florida Capital Investment Trust" or "trust" means a state beneficiary public trust created under the bill.
- "Florida Opportunity Fund" or "fund" means the private, for-profit limited partnership or limited liability company in which a designated investor purchases an equity interest or to which a designated investor extends credit.
- "Tax credit" means a contingent tax credit issued to offset tax liabilities imposed by this state, provided the proceeds of such tax are payable to the General Revenue Fund. A tax credit is not eligible to offset tax liabilities imposed by a political subdivision within this state.

Florida Capital Investment Trust
This bill creates the Florida Capital Investment Trust (Trust) as a state beneficiary public trust.

The bill creates a board of trustees (Board of Trustees) as follows:
- Five voting trustees and two nonvoting ex-officio trustees.
  - Three voting trustees appointed by the Governor.
  - One voting trustee appointed by the President of the Senate.
  - One voting trustee appointed by the Speaker of the House of Representatives.
  - One nonvoting ex officio trustee shall be the designee of Enterprise Florida, Inc., and serve at its pleasure.
  - One nonvoting ex officio trustee shall be the designee of the Florida Research Consortium and serve at its pleasure.

The bill establishes that the exercise of the powers of the Board of Trustees is deemed to be the performance of essential public purposes.

The Governor shall appoint one trustee to a term ending April 30, 2007 and two trustees ending April 30, 2009. The Senate and the House shall each appoint trustees to terms ending April 30, 2008. Thereafter, each voting trustee shall be appointed for a 3-year term. Ex-officio trustees serve annual terms and may be reappointed. A trustee's term ends on April 30 of his or her term expiration year. Trustees whose terms have expired may continue to serve until their replacements have been duly appointed and vacancies shall be filled in the same manner as original appointments.

Trustees must be selected based upon expertise and competence in the supervision of early stage investment managers, the fiduciary management of funds, the administration and management of a publicly listed company, or experience and competence in public accounting, auditing, and fiduciary responsibilities. The trustees will serve without compensation in the form of fees, per diem, or salary. Trustees may receive compensation or reimbursement for direct expenses, mileage, and other travel expenses related to the performance of their duties, pursuant to s. 112.061, F.S. Trustees may not have an interest in any entity to which a certificate is issued.

Powers and Limitations
The bill grants the Board of Trustees broad powers to carry out its purpose under the Act, including engaging consultants, expending funds, investing funds, contracting, bonding or insuring against loss, providing guarantees or other incentives, holding transferable tax credits, selling tax credits, or entering into any financial or other transaction.

In the event the Board of Trustees elects to hire employees, the bill requires such employees to be selected based on their knowledge and leadership in the field for which the person performs services for the Board of Trustees.

The bill requires the Board of Trustees, in conjunction with Department of Revenue (DOR) to develop a system for registration of tax credits received and transferred by the Trust. In addition, the Board of Trustees shall develop a documentation system to verify that claimed tax credits are valid.

The bill authorizes the Board of Trustees to charge fees for its guarantees to designated investors or for other services such that its operations may be conducted without subsequent legislative appropriation.

Issuance of Credits
The bill authorizes the issuance and transfer of credits to the Trust in the amount of $75 million. However, the bill limits the transfer of tax credits to $20 million for use in any single state fiscal year.

The Board of Trustees may transfer and sell tax credits solely for the purpose of fulfilling, in whole or in part, any certificate obligation issued by the Board of Trustees and such tax credits may only be transferred in increments of $100,000. Once the Board of Trustees transfers any tax credit, it shall immediately notify, in writing, the Governor, the President of the Senate, the Speaker of the House of Representatives and DOR. The Board of Trustees shall also be notified immediately of any transfers of tax credits by persons or businesses other than the Board of Trustees and shall notify DOR, in writing, of such transfers.

Tax credits may only serve to reduce tax liabilities imposed by chapter 212 (Sales and Use Tax), chapter 220 (Corporate Income Tax), s. 624.509 (insurance premiums taxes), or s. 624.510 (Tax on wet marine and transportation insurance). The bill specifies that an insurance company claiming a credit against premium tax liability under this section shall not be required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming such credit.

Any original sale of tax credits by the board shall be by competitive biding unless the sale is for the full face value of the credits. The use of transferred tax credits may not occur prior to July 1, 2011 or after July 1, 2036.

The bill grants DOR, in conjunction with the Board of Trustees, rule making authority to set the manner and form of documentation required to claim tax credits granted or transferred under this Act, and the requisites to prove an affirmative showing of qualification for such tax credits.

Florida Opportunity Fund Management Corporation
At the request of the Board of Trustees, Enterprise Florida, Inc. shall facilitate the creation of the Florida Opportunity Fund Management Corporation (Fund Corporation), as a private not-for-profit corporation. Enterprise Florida, Inc. shall be the Fund Corporation's sole member. The bill provides that the Fund Corporation is not a public corporation or an instrumentality of the state. The Fund Corporation shall have all powers granted under its organizational documents and shall indemnify directors to the broadest extent permissible under the laws of Florida.

Board of Directors
Enterprise Florida, Inc.'s vice chair shall select from its board of directors a five person-appointment committee (Committee). The Committee shall select five initial members to the board of directors (Board of Directors) for the Fund Corporation.

The initial members of the Board of Directors shall include persons who have expertise in the areas of the selection and supervision of early stage investment managers or in the fiduciary management of investment funds and other areas of expertise as deemed appropriate by the Committee. Members of the Board of Directors shall be subject to any restrictions on conflicts of interest specified in the organizational documents and shall have no interest in any venture capital investment fund allocation manager selected by the Fund Corporation pursuant to this Act or in any investment made by the Florida Opportunity Fund.

The Board of Directors shall be compensated for direct expenses and mileage pursuant to s. 112.061 but shall not receive a fee or salary for service as directors. The Fund Corporation serves as a general partner or manager of the Fund and may charge a management fee on assets under management in the Fund, only to pay for reasonable and necessary costs.

Purpose
The purposes of the Fund Corporation shall be to organize and manage the Florida Opportunity Fund.

The Fund Corporation shall conduct a national solicitation for investment plan proposals from qualified venture capital investment fund allocation managers for the raising and investing of capital by the Fund Corporation. Proposals shall address the following in relation to the applicant:

- level of experience;
- quality of management;
- investment philosophy and process;
- probability of success in fundraising;
- prior investment fund results; and
- a plan for achieving the purposes of the bill.

The Fund Corporation shall only select a manager with expertise in the management and fund allocation of investment in venture capital funds.

The Florida Opportunity Fund

The bill directs the Fund Corporation to create the Florida Opportunity Fund (Fund), upon request by the Board of Trustees, to be organized and incorporated as a for-profit limited liability partnership or limited liability corporation under the laws of Florida. The Board of Trustees, the Fund Corporation or the Fund may contract with Enterprise Florida, Inc. for provision of services necessary for continuing operations.

The Fund shall invest on a funds-of-funds basis and emphasize investment in seed capital and early stage venture capital funds focusing on opportunities in Florida. While not precluded from investing in funds with a wider geographic spread of portfolio investment, the Fund shall require an investment fund to have a record of investment in Florida, be based in Florida, or have an office in Florida staffed with a full-time, professional venture investment executive to be eligible for investment.

The investments by the Fund shall be on partnership interests in private venture capital funds and not in direct investments in individual businesses. The Fund shall invest in venture capital funds with experienced managers or management teams with demonstrated expertise and a successful history in the investment of early stage venture capital funds. The Fund may invest in newly created early stage venture capital funds as long as the manager or management teams of the funds have experience, expertise, and a successful history in the investment of venture capital funds. The Fund may not invest in a fund unless that fund has raised capital from other sources in an amount greater than the investment of the Fund such that the amount invested in a Florida entity by the receiving venture capital fund is at least twice the amount invested by the corporation. The Fund Corporation and its partners or shareholders may negotiate any and all terms and conditions for its investments, including draw back of management fees and other provisions that maximize investment in seed and early stage companies based in Florida.

Investments by designated investors in the Fund shall be deemed permissible investments for state-chartered banks and for domestic insurance companies under applicable state law.

If the fund is liquidated or has returned all capital to designated investors in accordance with contractual agreements, or the guarantee capacity of the trust, at the sole discretion of the board, is sufficient for additional certificates, new funding of the Florida Opportunity Fund may be implemented for subsequent venture capital fund-of-funds investments. If the board takes exception to an additional funding, such additional funding may only be implemented without the benefit of certificates from the board.

Fees

The bill authorizes the Board of Trustees to charge fees for its guarantees to designated investors or for other services such that its operations may be conducted without subsequent legislative appropriation. The bill also authorizes the Fund Corporation to charge a management fee on assets under management in the Fund. In addition, managers may charge a management fee to the Fund.

Annual Report
The bill requires that the Board of Trustees provide an annual report on the activities conducted by the Fund to the Governor, the President of the Senate and the Speaker of the House of Representatives. The report shall include the following:

- a copy of the independent audit of the Fund;
- a valuation of the assets of the Fund;
- a review of the progress of the Manager in implementing the fund's investment plan;
- the benefits to the state resulting from this program;
- the number of businesses created and their associated industry;
- the number of jobs created; and
- a description of any sale of tax certificates and any sale of tax certificates that is reasonably anticipated by the Board of Trustees to meet its certificate obligations.

The bill provides that DOR may share information relative to tax credits claimed under this Act to the Board of Trustee of the Trust in the conduct of the Trust's official business.

The bill includes tax credits transferred or sold within the priority list of applied credits against certain taxes and within the order or taking credits or deductions against the insurance premium tax.

Appropriations
The bill appropriates $750,000, for the fiscal year 2006-2007, from the General Revenue Fund to the Florida Capital Investment Trust to be used for startup activities necessary to implement the provisions of this Act.

C. SECTION DIRECTORY:

Section 1. Creates Part X of chapter 288, including ss. 288.9621, 288.9622, 288.9623, 288.9624, 288.9625, 288.9626, 288.9627 and 288.9628, F.S., relating to the Capital Formation Act.

Section 2. Amends s. 213.053, F.S., to authorize the Department of Revenue to provide tax credit information to the Board of Trustees of the Florida Capital Investment Trust.

Section 3. Amends s. 220.02, F.S., to include tax credits in a list of credits and in a priority order.

Section 4. Amends s. 624.509, F.S., to include tax credits in a priority order of credits and deductions against premium tax.

Section 5. Provides an appropriation.

Section 6. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill authorizes the transfer of up to $20 million per year of contingent tax credits as a guarantee for investments made under the Act. The total value of credits that may be claimed is $75 million. This may result in a reduction of state revenues of up to $20 million per year if transferees claim such credits.

2. Expenditures:

The bill appropriates $750,000, for the fiscal year 2006-2007, from the General Revenue Fund to the Florida Capital Investment Trust to be used for startup activities necessary to implement the provisions of this Act.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to spend funds or to take any action requiring the expenditure of funds, does not reduce the county's authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants DOR, in conjunction with the Board of Trustees, rule making authority to set the manner and form of documentation required to claim tax credits granted or transferred under this Act, and the requisites to prove an affirmative showing of qualification for such tax credits.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Subsection (2) of new s. 288.9625, F.S. provides that the board may transfer and sell tax credits solely for the purpose of fulfilling, in whole or in part, any certificate obligation issued by the "board". This language may conflict with the power of the Fund Corporation, not the Board of Trustees, to enter into certificate obligations. As a result, it appears that, although the Fund Corporation may enter into contracts for certificate obligations with Managers, it does not have the power to grant tax credits to that Manager.

Also, this subsection states that the Board of Trustees shall be notified immediately of any transfers of tax credits by persons or businesses other than the Board of Trustees and shall notify DOR, in writing, or such transfers. The transfer of tax credits appears to be only under the authority of the Trust, hence, this language conflicts with such authority.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2006, the Economic Development, Trade and Banking Committee adopted two amendments that remove the public records exemption and clarifies that the intent of the bill is to invest in Florida entities.

CHAMBER ACTION

The Economic Development, Trade & Banking Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to capital formation; creating a new pt. X of ch. 288, F.S.; providing a short title; providing legislative findings and intent; providing definitions; creating the Florida Capital Investment Trust as a state beneficiary public trust; providing for administration by a board of trustees; providing for appointment of board members; providing for terms; providing for serving without compensation; providing for travel and other direct expenses; providing criteria for trustees; providing for powers and duties of trustees; providing for hiring employees; providing for meetings of the board; authorizing the trust to receive, hold, use, transfer, and sell certain tax credits for certain purposes; providing requirements and limitations; authorizing the Department of Revenue to adopt rules for certain purposes; requiring Enterprise Florida, Inc., to facilitate establishment of the Florida Opportunity Fund Management Corporation;

specifying criteria of the corporation; providing for appointment of a board of directors selection committee; providing for selection of a board of directors of the corporation by Enterprise Florida, Inc.; specifying criteria; providing for terms and requirements of directors; providing purposes of the corporation; providing duties and responsibilities of the corporation; authorizing the corporation to charge a management fee for certain purposes; providing for travel and other direct expenses; providing for powers of the corporation; creating the Florida Opportunity Fund as a for-profit, limited partnership or a limited liability corporation to be organized and incorporated by the Florida Opportunity Fund Management Corporation; authorizing certain entities to contract with Enterprise Florida, Inc., for certain purposes; providing investment requirements for the fund; requiring the board of trustees to issue annual reports on activities of the fund; providing report requirements; amending s. 213.053, F.S.; authorizing the Department of Revenue to provide certain tax credit information to the board of trustees; amending s. 220.02, F.S.; including tax credits transferred or sold by the board of trustees within the priority list of applied credits against certain taxes; amending s. 624.509, F.S.; including tax credits transferred or sold by the board of trustees within the order of taking credits or deductions against the insurance premium tax; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Parts X and XI of chapter 288, Florida Statutes, are redesignated as parts XI and XII, respectively, and a new part X of that chapter, consisting of sections 288.9621, 288.9622, 288.9623, 288.9624, 288.9625, 288.9626, 288.9627, and 288.9628, is created to read:

288.9621 Short title.--This part may be cited as the "Florida Capital Formation Act."

288.9622 Findings and intent.--

(1) The Legislature finds and declares that there is need to increase the availability of seed capital and early stage venture equity capital for emerging companies in the state, including, without limitation, enterprises in life sciences, information technology, advanced manufacturing processes, aviation and aerospace, and homeland security and defense, as well as other strategic technologies.

(2) It is the intent of the Legislature that this part serve to mobilize private investment in a broad variety of venture capital partnerships in diversified industries and geographies; retain private-sector investment criteria focused on rate of return; use the services of highly qualified managers in the venture capital industry regardless of location; facilitate the organization of the Florida Opportunity Fund as a fund-of-funds investor in seed and early stage venture capital and angel funds; and precipitate capital investment and extensions of credit to and in the Florida Opportunity Fund.

(3) It is the intent of the Legislature to mobilize venture equity capital for investment in such a manner as to result in a significant potential to create new businesses and jobs in this state that are based on high growth potential technologies, products, or services and that will further diversify the economy of this state.

288.9623 Definitions.--As used in this part:

(1) "Board" means the board of trustees of the Florida Capital Investment Trust.

(2) "Certificate" means a contract between the trust and a designated investor evidencing the terms of a guarantee or incentive granted to a designated investor.

(3) "Corporation" means the Florida Opportunity Fund Management Corporation created under this part.

(4) "Designated investor" means a person, other than the board, who purchases an equity interest in the Florida Opportunity Fund or is a party to a certificate or who is a lender to the Florida Opportunity Fund and is a party to a certificate.

(5) "Florida Capital Investment Trust" or "trust" means a state beneficiary public trust created under this part.

(6) "Florida Opportunity Fund" or "fund" means the private, for-profit limited partnership or limited liability company in which a designated investor purchases an equity interest or to which a designated investor extends credit.

(7) "Tax credit" means a contingent tax credit issued under this part or subsequent legislative action that is available to offset tax liabilities imposed by this state,

provided the proceeds of such tax are payable to the General Revenue Fund. A tax credit is not eligible to offset tax liabilities imposed by a political subdivision within this state.

288.9624 Florida Capital Investment Trust.--

(1) The Florida Capital Investment Trust is created as a state beneficiary public trust to be administered by the board. The exercise by the board of powers conferred by this part is deemed and held to be the performance of essential public purposes.

(2)(a) The board shall consist of five voting trustees and two nonvoting ex officio trustees. A majority of voting trustees shall constitute a quorum.

(b) Three voting trustees shall be appointed by the Governor; one voting trustee shall be appointed by the President of the Senate; and one voting trustee shall be appointed by the Speaker of the House of Representatives. The Governor shall appoint one trustee to a term ending April 30, 2007, and two trustees to terms ending April 30, 2009. The President of the Senate and the Speaker of the House of Representatives shall each appoint trustees to terms ending April 30, 2008. Thereafter, each voting trustee shall be appointed for a 3-year term.

(c) One nonvoting ex officio trustee shall be the designee of Enterprise Florida, Inc., and one nonvoting ex officio trustee shall be the designee of the Florida Research Consortium. Ex officio trustees serve annual terms at the pleasure of their appointing organizations and may be

reappointed. A trustee's term shall end on April 30 of his or her term expiration year. Trustees whose terms have expired may continue to serve until their replacements have been duly appointed.

(d) Vacancies shall be filled in the same manner as the appointment of the original trustee to whom a successor is sought.

(3) Trustees shall serve on the board without compensation in the form of fees, per diem, or salary. Trustees may receive compensation or reimbursement for direct expenses, mileage, and other travel expenses related to the performance of their duties pursuant to s. 112.061. Trustees shall be selected based upon demonstrated expertise and competence in the supervision of early stage investment managers, the fiduciary management of funds, the administration and management of a publicly listed company, or experience and competence in public accounting, auditing, and fiduciary responsibilities. Trustees may not have an interest in any entity to which a certificate is issued.

(4) The board may engage consultants, expend funds, invest funds, contract, bond or insure against loss, provide guarantees or other incentives, hold transferable tax credits, sell tax credits, or enter into any financial or other transaction or perform any other act necessary to carry out its purpose under this part. The board, in conjunction with the Department of Revenue, shall develop a system for registration of any tax credits received by the trust and transferred under this part. The board shall also create a system of documentation that permits verification that any tax credit claimed upon a tax

return is validly held by the person claiming such tax credit and properly taken in the year of claim and that any transfers of the tax credit are made in accordance with the requirements of this part.

(5) If the board elects to hire employees, such persons shall be selected by the board based upon knowledge and leadership in the field for which the person performs services for the board. The board shall charge fees for its guarantees to designated investors or for other services such that the board's operations may be conducted without subsequent legislative appropriation.

288.9625 Issuance of tax credits.--

(1) The trust shall receive and hold for the purposes of this part tax credits under this part that may be used to reduce any tax liability imposed by the state under chapter 212, chapter 220, s. 624.509, or s. 624.510. The total amount of tax credits issued and transferred to the trust is $75 million. The tax credits shall be transferable by the board as provided in this part, provided no such transferred tax credit shall be exercisable before July 1, 2011, or after July 1, 2036.

(2) The board may transfer and sell tax credits solely for the purpose of fulfilling, in whole or in part, any certificate obligation issued by the board. The board shall immediately notify the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Department of Revenue, in writing, if any tax credit is transferred. The board shall be notified immediately of any transfers of tax credits by persons

or businesses other than the board and shall notify the Department of Revenue, in writing, of such transfers.

(3) The board shall ensure that no more than $20 million in tax credits is transferred that may be claimed and used to reduce taxes payable to the General Revenue Fund for any single state fiscal year. The board shall clearly indicate upon the face of the document transferring the tax credit the principal amount of the tax credit and the state fiscal year or years during which the credit may be claimed. Tax credits may be transferred in increments of no less than $100,000. A copy of the document transferring the tax credit shall be transmitted to the executive director of the Department of Revenue, who shall allow the credit to be claimed against tax liabilities of the person or business consistent with the terms appearing in the transfer document.

(4) If the tax liabilities of the taxpayer are insufficient to exhaust the tax credit for which the taxpayer is eligible, the balance of the tax credit may be refunded by the state. If a tax credit granted under this section is not claimed in the year designated for claiming the credit on the transfer document, any return for the year in which the credit was eligible to be claimed may be amended to claim the credit within the time specified by ss. 95.091 and 215.26

(5) Persons or businesses to which tax credits under this section are transferred shall retain documentation supporting eligibility to claim the tax credits and evidence of the transfer of the tax credits, if applicable, until the time

period provided to audit the tax returns on which the tax credits were claimed has passed.

(6) The Department of Revenue, in conjunction with the board, may adopt rules governing the manner and form of documentation required to claim tax credits granted or transferred under this section and may establish guidelines as to the requisites for an affirmative showing of qualification for tax credits granted or transferred under this section.

(7) An insurance company claiming a credit against premium tax liability under this section shall not be required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming such credit. Because credits under this section are available to an insurance company, s. 624.5091 does not limit such credit in any manner.

(8) Any original sale of tax credits by the board shall be by competitive bidding unless the sale is for the full face value of the credits.

288.9626 Florida Opportunity Fund Management Corporation.--

(1) At the request of the board, Enterprise Florida, Inc., shall facilitate the creation of the Florida Opportunity Fund Management Corporation as a private, not-for-profit corporation. Enterprise Florida, Inc., shall be the corporation's sole member. The corporation is not a public corporation or instrumentality of the state.

(2) The vice chair of Enterprise Florida, Inc., shall select from among its sitting board of directors a five-person appointment committee. The appointment committee shall select

five initial members of a board of directors for the corporation. The persons elected to the initial board of directors by the appointment committee shall include persons who have expertise in the area of the selection and supervision of early stage investment managers or in the fiduciary management of investment funds and other areas of expertise as deemed appropriate by the appointment committee. After election of the initial board of directors, vacancies on the board of directors of the corporation shall be elected by the board of directors of Enterprise Florida, Inc., and shall serve terms as provided in the corporation's organizational documents. Members of the board of directors shall be subject to any restrictions on conflicts of interest specified in the organizational documents and shall have no interest in any venture capital investment fund allocation manager selected by the corporation pursuant to the provisions of this part or in any investments made by the Florida Opportunity Fund.

(3) The purposes of the corporation shall be to organize the Florida Opportunity Fund, select an early stage venture capital investment fund allocation manager, negotiate the terms of a contract with the venture capital investment fund allocation manager, execute the contract with the selected venture capital investment fund allocation manager on behalf of the Florida Opportunity Fund, manage the business affairs of the Florida Opportunity Fund such as accounting, audit, insurance, and related requirements, receive investment returns from the Florida Opportunity Fund, and reinvest the investment returns in the Florida Opportunity Fund in order to provide additional

venture capital investments designed to result in a significant potential to create new businesses and jobs in this state and further diversify the economy of this state.

(4) Upon organization, the corporation shall conduct a national solicitation for investment plan proposals from qualified venture capital investment fund allocation managers for the raising and investing of capital by the corporation. Any proposed investment plan shall address the applicant's level of experience, quality of management, investment philosophy and process, provability of success in fundraising, prior investment fund results, and plan for achieving the purposes of this part. The corporation shall select only a venture capital investment fund allocation manager with demonstrated expertise in the management and fund allocation of investments in venture capital funds.

(5) The corporation may charge a management fee on assets under management in the Florida Opportunity Fund. The fee shall be in addition to any fee charged to the Florida Opportunity Fund by the venture capital investment fund allocation manager, but the fee shall be charged only to pay for reasonable and necessary costs of the corporation.

(6) Directors of the corporation shall be compensated for direct expenses and mileage pursuant to s. 112.061 but shall not receive a fee or salary for service as directors.

(7) The corporation shall have all powers granted under its organizational documents and shall indemnify directors to the broadest extent permissible under the laws of this state.

288.9627 Florida Opportunity Fund.--

(1) The Florida Opportunity Fund is created as a for-profit limited partnership or limited liability corporation that shall be organized and incorporated in this state by the Florida Opportunity Fund Management Corporation upon request by the board. The board, the corporation, or the fund may contract with Enterprise Florida, Inc., for provision of services necessary for continuing operations.

(2) The fund shall invest on a fund-of-funds basis and emphasize investment in seed capital and early stage venture capital funds focusing on opportunities in this state. While not precluded from investing in funds with a wider geographic spread of portfolio investment, the fund shall require an investment fund to have a record of investment in this state, be based in this state, or have an office in this state staffed with a full-time, professional venture investment executive to be eligible for investment. The investments by the fund shall be on partnership interests in private venture capital funds and not in direct investments in individual businesses. The fund shall invest in venture capital funds with experienced managers or management teams with demonstrated expertise and a successful history in the investment of early stage venture capital funds. The fund may invest in newly created early stage venture capital funds as long as the manager or management teams of the funds have experience, expertise, and a successful history in the investment of venture capital funds. The Florida Opportunity Fund may not invest in a fund unless that fund has raised capital from other sources in an amount greater than the investment of the Florida Opportunity Fund such that the amount

invested in an entity in this state by the receiving venture capital fund is at least twice the amount invested by the corporation. The corporation and its partners or shareholders may negotiate any and all terms and conditions for its investments, including draw back of management fees and other provisions that maximize investment in seed and early stage companies based in this state.

(3) The interest of the corporation in the fund shall be to serve as general partner or manager and to be paid a management fee to cover its costs.

(4) Investments by designated investors in the fund shall be deemed permissible investments for state-chartered banks and for domestic insurance companies under applicable state law.

(5) If the fund is liquidated or has returned all capital to designated investors in accordance with contractual agreements, or the guarantee capacity of the trust, at the sole discretion of the board, is sufficient for additional certificates, a new funding of the Florida Opportunity Fund may be implemented for subsequent venture capital fund-of-funds investments. If the board takes exception to an additional funding, such additional funding may only be implemented without the benefit of certificates from the board.

288.9628 Annual reporting.--The board shall issue an annual report on the activities conducted by the Florida Opportunity Fund and present the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The annual report shall include a copy of the independent audit of the fund and a valuation of the assets of

the fund and shall review the progress of the investment fund allocation manager in implementing the fund's investment plan, the benefits to the state resulting from this program, including the number of businesses created and their associated industry, and the number of jobs created. The annual report shall also describe any sale of tax certificates and any sale of tax certificates that is reasonably anticipated by the board to meet its certificate obligations.

Section 2. Paragraph (y) is added to subsection (7) of section 213.053, Florida Statutes, to read:

213.053 Confidentiality and information sharing.--

(7) Notwithstanding any other provision of this section, the department may provide:

(y) Information relative to tax credits claimed under part X of chapter 288 to the board of trustees of the Florida Capital Investment Trust in the conduct of the trust's official business.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

Section 3. Subsection (8) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.--

(8) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: those enumerated in s. 631.828, those enumerated in s. 220.191, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 220.1895, those enumerated in s. 221.02, those enumerated in s. 220.184, those enumerated in s. 220.186, those enumerated in s. 220.1845, those enumerated in s. 220.19, those enumerated in s. 220.185, ~~and~~ those enumerated in s. 220.187, and those enumerated in part X of chapter 288.

Section 4. Subsection (7) of section 624.509, Florida Statutes, is amended to read:

624.509 Premium tax; rate and computation.--

(7) Credits and deductions against the tax imposed by this section shall be taken in the following order: deductions for assessments made pursuant to s. 440.51; credits for taxes paid under ss. 175.101 and 185.08; credits for income taxes paid under chapter 220, the emergency excise tax paid under chapter 221 and the credit allowed under subsection (5), as these credits are limited by subsection (6); credits allowed under part X of chapter 288; and all other available credits and deductions.

Section 5. For fiscal year 2006-2007, the sum of $750,000 is appropriated from the General Revenue Fund to the Florida Capital Investment Trust to be used for startup activities necessary to implement part X of chapter 288, Florida Statutes, as created by this act.

Section 6. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7055 CS PCB EDTB 06-01 Enterprise Zone Act
SPONSOR(S): Economic Development, Trade & Banking Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Development, Trade & Banking Committee	8 Y, 0 N	Carlson	Carlson
1) Finance & Tax Committee	6 Y, 0 N, w/CS	Rice	Diez-Arguelles
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

In 2005, the Florida Enterprise Zone Act was amended, re-enacted, and scheduled to repeal in 2015.[1] Subsequently, staff from the Department of Revenue, the Governor's Office of Tourism, Trade and Economic Development and House Members raised concerns over the application of certain provisions of the revised act.

The bill provides corrections and remedial changes to the act as follows:

- The bill amends two obsolete expiration dates for related provisions, to make them consistent with the expiration of the Enterprise Zone Act.
- The bill also clarifies that the enterprise zone building materials sales tax refund may only be used once per parcel of real property unless there is a change in ownership, a new lessor or new lessee of the real property.
- The bill amends the definition of "new job has been created" for purposes of the enterprise zone jobs tax credit against the sales and corporate income taxes.
- This bill also provides that a local government must provide notice 90 days prior to the adoption of a resolution proposing an enterprise zone boundary change. The notice must explain that businesses and property owners subject to exclusion due to the boundary change may lose their enterprise zone eligibility.
- The bill also provides a limited two-year grandfather period for projects involving the rehabilitation of real property that were excluded from an enterprise zone because of the 2005 revision to the law.

The Revenue Estimating Conference has determined a ($3.3) million impact on state revenues and a ($0.7) million loss to local revenues.

This bill takes effect upon becoming law.

[1] See ch. 2005-287, L.O.F.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes – The bill will grandfather certain businesses that would otherwise be excluded from eligibility under the act and will allow these businesses to receive enterprise zone tax incentives.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Florida Enterprise Zone Program

The Florida Enterprise Zone Act (act), codified in ss. 290.001-290.016, F.S., was created:

> to provide the necessary means to assist local communities, their residents, and the private sector in creating the proper economic and social environment to induce the investment of private resources in productive business enterprises located in severely distressed areas and to provide jobs for residents of such areas.[2]

The Florida Enterprise Zone Act of 1994 was scheduled to be repealed on December 31, 2005, but was re-enacted as the Florida Enterprise Zone Act (act) by ch. 2005-287, L.O.F., for an additional ten years, and is now scheduled to be repealed December 31, 2015.

Under the act, areas of the state meeting specified criteria, including suffering from pervasive poverty, unemployment, and general distress, have been designated as enterprise zones. The act established a process for the nomination and designation of a maximum of 20 enterprise zones in 1994.[3] Subsequently, the Legislature has designated additional zones. Currently, there are 55 enterprise zones in the state. When the Enterprise Zone Act was re-enacted by ch. 2005-287, L.O.F., 53 existing enterprise zones were allowed to apply for re-designation; 51 of 53 have been re-designated. Four of the 55 enterprise zones were created by ch. 2005-244, L.O.F.: City of Lakeland, Indian River County, Sumter County, and Orange County. There are also three Federal Enterprise Communities and two Federal Empowerment Zones. Certain federal, state, and local incentives are authorized to induce private businesses to invest in these enterprise zones.

State Incentives

The program's incentives are as follows:

- Jobs credit against sales or corporate income taxes: In order to be eligible, businesses must increase the number of full time jobs. The credit amount varies based on job location and employee wage. [4]
- Property tax credit: New, expanded, or rebuilt businesses located within an enterprise zone are allowed a credit on their Florida corporate income tax based on the amount of property taxes paid.[5]
- Sales tax refund for building materials: A refund is available for sales taxes paid on the purchase of building materials used in the rehabilitation of real property in an enterprise zone.

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[2] Section 290.003, F.S.
[3] Sections 290.0055 and 290.0065, F.S.
[4] Sections 212.096 and 220.181, F.S.
[5] Section 220.182, F.S.

The amount of the refund is the lesser of 97 percent of the sales taxes paid or $5,000, or, if 20 percent or more of the business's employees reside in an enterprise zone, the lesser of 97 percent of the sales taxes paid or $10,000.[6]

- Sales tax refund for business property used in an enterprise zone: A refund is available for sales taxes paid on the purchase of business property with a purchase price of $5,000 or more purchased by and for use in a business located in an enterprise zone. The amount of the refund is the lesser of 97 percent of the sales taxes paid or $5,000, or, if 20 percent or more of the business's employees reside in an enterprise zone, the lesser of 97 percent of the sales taxes paid or $10,000.[7]

Local Incentives

The following are examples of local incentives:

- Sales tax exemption for electrical energy used in an enterprise zone: A sales tax exemption (state and local taxes) is available to qualified businesses located in an enterprise zone on the purchase of electrical energy. This exemption is only available if the municipality in which the business is located has passed an ordinance to exempt the municipal utility taxes on such business.[8]
- Economic development ad valorem tax exemption: Up to 100 percent of the assessed value of improvements to real or tangible property of a new or expanded business located in an enterprise zone may be exempted from property taxes if the voters of a municipality authorize the governing body of the municipality to grant such exemptions.[9]
- Occupational license tax exemption: By ordinance, the governing body of a municipality may exempt 50 percent of the occupational license tax for businesses located in an enterprise zone.[10]
- Local impact fee abatement or reduction, or low-interest or interest-free loans, or grants to businesses.[11]

State Agencies

The Governor's Office of Tourism, Trade, and Economic Development (OTTED) administers the Florida Enterprise Zone Act; the Department of Revenue (DOR) reviews and approves or denies a business's application for enterprise zone tax credits; and Enterprise Florida, Inc., is responsible for marketing the act.

Effect of Proposed Changes:

Building Materials Sales Tax Exemption

The bill clarifies that the sales tax refund for building materials used to rehabilitate real property in an enterprise zone may only be used once per parcel of real property, unless there is a change in ownership, a new lessor or new lessee of the real property. This section provides that this provision applies retroactively to July 1, 2005.

Until July 1, 2005, the sales tax refund for building materials could only be used once per parcel of real property. During the 2005 Regular Session, this provision was removed with the intent of allowing the exemption to be granted to subsequent owners of a parcel of property. However, the 2005 change had the unintended consequence of broadening the exemption by allowing it to be used multiple times per parcel. This bill restores the pre-2005 language, providing that the exemption may only be used once

[6] Section 212.08(5)(g), F.S.
[7] Section 212.08(5)(h), F.S.
[8] Sections 212.08(15) and 166.231(8), F.S.
[9] Section 196.1995, F.S.
[10] Section 205.054, F.S.
[11] Section 290.0057(1)(e), F.S.

per parcel, and allows subsequent owners, lessor or lessees of the parcel to be eligible for the exemption. This would allow two separate owners, lessors or lessees of the same piece of real property to apply for the tax refund in a single taxable year.

Definition of Job Creation

The bill amends the definition of "new job has been created" for purposes of the enterprise zone job tax credit against sales tax. This provides that to be eligible for the job tax credit a business located in an enterprise zone must demonstrate to DOR that, on the date of application, the total number of full-time jobs is greater than it was 12 months prior to such date. Currently, a business must demonstrate that the number of full time jobs has increased from the average of the previous 12 months. According to DOR, changing the provision will make it easier to calculate when a new job has been created, because it ties that calculation to a specified date.

The bill amends the definition of "new job has been created" for purposes of the enterprise zone job tax credit against the corporate income tax. This will provide that to be eligible for the job tax credit a business located in an enterprise zone must demonstrate to DOR that, on the date of application, the total number of full-time jobs is greater than it was 12 months prior to such date.

The bill also provides that a business is eligible for the enterprise zone job tax credit against corporate income tax, if they can demonstrate to DOR that, on the date of application, the total number of full time jobs is greater than it was 12 months prior to such date.

Notice of Proposed Zone Boundary Changes

The bill requires that a local government intending to seek an enterprise zone boundary change provide an explanation of this possibility and the consequences of it in the notice that is produced 90 days before the meeting regarding the adoption of the boundary change resolution. Currently, there is no notice requirement for such boundary changes and affected businesses may lose their eligibility without their knowledge.

Relief for Businesses Excluded in Zones by 2005 Law

The bill provides for a limited, two-year period in which a project excluded from an enterprise zone through the redesignation process required by ch. 2005-287, L.O.F., may retain eligibility for the building materials tax exemption provided by s. 212.08(5)(g) if it meets the following requirements:

- The project must be located in an enterprise zone on or before December 31, 2005;
- The project must have a duration extending beyond December 31, 2005;
- The project has been excluded from the enterprise zone because the portion of the zone in which the project is located did not meet the pervasive poverty rate requirements of s. 290.0058(2)(a) or (b);
- The difference between the pervasive poverty rate requirements of s. 290.0058(2)(a) and the actual poverty rate in the area in which the project is located must be five percentage points or less;
- The business applies for a certificate of eligibility for the project with the enterprise zone development agency by November 1, 2006 and demonstrates that the project meets the requirements of this section; and
- The enterprise zone development agency provides a copy of the certificate of eligibility to the Department of Revenue.

This provision is intended to provide limited relief for multi-year projects involving the rehabilitation of real property located in an enterprise zone that were planned and begun before the 2005 law took place and that have subsequently lost their planned tax benefit eligibility.

Expiration Dates

The bill changes an obsolete expiration date within the definition of "adjusted federal income," to correspond with the expiration date of the Florida Enterprise Zone Act, which is December 31, 2015.

C. SECTION DIRECTORY:

Section 1: Amends s. 195.099, F.S., to correct an expiration date.

Section 2: Amends s. 220.03(1)(ff), F.S., to revise the definition of "new job has been created."

Section 3: Amends s. 212.08(5)(g), F.S., to limit the exemption of taxes paid for the rehabilitation of real property in an enterprise zone to one exemption per parcel unless there has been a change in ownership; providing for retroactive application.

Section 4: Amends s. 212.096, F.S., to revise the definition of "new job has been created."

Section 5: Amends s. 220.13, F.S., to correct expiration dates.

Section 6: Amends s. 220.181, F.S., to revise the requirement for demonstrating an increase in jobs.

Section 7: Amends s. 290.0055, F.S., to require a local government to provide notice of affects of a proposed boundary change.

Section 8. Provides that certain multi-year projects may retain eligibility for the building materials tax exemption through December 31, 2007 if certain requirements are met.

Section 9: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The Revenue Estimating Conference estimates the following:

	FY 2006-07	FY 2007-08
General Revenue:	($3.3)m	($3.2)m
Total	($3.3)m	($3.2)m

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

	FY 2006-07	FY 2007-08
Revenue Sharing	($0.1)m	($0.1)m
Local Government Half Cent	($0.3)m	($0.3)m
Local Option:	($0.3)m	($0.3m
Total	($0.7)m	($0.7)m

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will provide limited relief to certain businesses excluded from an existing enterprise zone by operation of ch. 2005-287, L.O.F., if that business was excluded in the course of the redesignation process enacted in law because the area in which it was located fell short of the required poverty thresholds by five or fewer percentage points.

In addition, Commercial and residential owners of real property will only be eligible to receive the enterprise zone building materials sales tax credit once per parcel of real property.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Although the bill reduces the authority of cities and counties to raise revenues in the aggregate, the impact is less than $1.8 million and is insignificant. The bill is therefore exempt from the provisions of Article VII, Section 18(b), Florida Constitution.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 4, 2006, the Finance and Tax Committee adopted two amendments. The first was a technical change to s. 212.096(1)(a), F.S., relating to the enterprise zone building materials tax credit program. It corrected an omission of the change in the "new job has been created" definition. The second was to remove the requirement that every business and property owner subject to exclusion due to a boundary change receive written notification. Instead, the local government must explain this possibility and the consequences of it in the notice that is produced 90 days before the meeting regarding the adoption of the boundary change resolution.

CHAMBER ACTION

The Finance & Tax Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to enterprise zones; amending s. 195.099, F.S.; reenacting a periodic review requirement; providing for future expiration; amending s. 220.03, F.S.; revising a definition; amending s. 212.08, F.S.; limiting the exemption by refund of certain taxes for rehabilitation of certain property in an enterprise zone; providing an exception; providing for retroactive application; amending s. 212.096, F.S.; revising definitions; revising an information requirement for claiming an enterprise zone jobs tax credit; amending s. 220.13, F.S.; reenacting a definitional provision; providing for future expiration of provisions relating to enterprise zone credits; amending s. 220.181, F.S.; revising certain criteria for granting an enterprise zone jobs tax credit; amending s. 290.0055, F.S.; providing a meeting notice requirement for a governing body adopting an enterprise zone boundary change resolution; providing for time-limited continuing eligibility for a building materials tax exemption for

certain businesses; specifying eligibility requirements; providing for retroactive application; providing for future repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 195.099, Florida Statutes, is reenacted and amended to read:

195.099 Periodic review.--

(1)(a) The department shall periodically review the assessments of new, rebuilt, and expanded business reported according to s. 193.077(3), to ensure parity of level of assessment with other classifications of property.

(b) ~~The provisions of~~ This subsection shall expire ~~and be void~~ on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act ~~June 30, 2005~~.

Section 2. Paragraph (ff) of subsection (1) of section 220.03, Florida Statutes, is amended to read:

220.03 Definitions.--

(1) SPECIFIC TERMS.--When used in this code, and when not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the following terms shall have the following meanings:

(ff) "New job has been created" means that, on the date of application, the total number of full-time jobs is greater than the total was ~~has increased in an enterprise zone from the average of the previous~~ 12 months prior to that date, as

demonstrated to the department by a business located in the enterprise zone.

Section 3. Paragraph (g) of subsection (5) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.--

(g) Building materials used in the rehabilitation of real property located in an enterprise zone.--

1. Building materials used in the rehabilitation of real property located in an enterprise zone shall be exempt from the tax imposed by this chapter upon an affirmative showing to the satisfaction of the department that the items have been used for the rehabilitation of real property located in an enterprise zone. Except as provided in subparagraph 2., this exemption inures to the owner, lessee, or lessor of the rehabilitated real property located in an enterprise zone only through a refund of previously paid taxes. To receive a refund pursuant to this paragraph, the owner, lessee, or lessor of the rehabilitated real property located in an enterprise zone must file an application under oath with the governing body or enterprise zone development agency having jurisdiction over the enterprise zone where the business is located, as applicable, which includes:

a. The name and address of the person claiming the refund.

b. An address and assessment roll parcel number of the rehabilitated real property in an enterprise zone for which a refund of previously paid taxes is being sought.

c. A description of the improvements made to accomplish the rehabilitation of the real property.

d. A copy of the building permit issued for the rehabilitation of the real property.

e. A sworn statement, under the penalty of perjury, from the general contractor licensed in this state with whom the applicant contracted to make the improvements necessary to accomplish the rehabilitation of the real property, which statement lists the building materials used in the rehabilitation of the real property, the actual cost of the building materials, and the amount of sales tax paid in this state on the building materials. In the event that a general contractor has not been used, the applicant shall provide this information in a sworn statement, under the penalty of perjury. Copies of the invoices which evidence the purchase of the building materials used in such rehabilitation and the payment of sales tax on the building materials shall be attached to the sworn statement provided by the general contractor or by the applicant. Unless the actual cost of building materials used in the rehabilitation of real property and the payment of sales taxes due thereon is documented by a general contractor or by the applicant in this manner, the cost of such building materials shall be an amount equal to 40 percent of the increase in assessed value for ad valorem tax purposes.

f. The identifying number assigned pursuant to s. 290.0065 to the enterprise zone in which the rehabilitated real property is located.

g. A certification by the local building code inspector that the improvements necessary to accomplish the rehabilitation of the real property are substantially completed.

h. Whether the business is a small business as defined by s. 288.703(1).

i. If applicable, the name and address of each permanent employee of the business, including, for each employee who is a resident of an enterprise zone, the identifying number assigned pursuant to s. 290.0065 to the enterprise zone in which the employee resides.

2. This exemption inures to a city, county, other governmental agency, or nonprofit community-based organization through a refund of previously paid taxes if the building materials used in the rehabilitation of real property located in an enterprise zone are paid for from the funds of a community development block grant, State Housing Initiatives Partnership Program, or similar grant or loan program. To receive a refund pursuant to this paragraph, a city, county, other governmental agency, or nonprofit community-based organization must file an application which includes the same information required to be provided in subparagraph 1. by an owner, lessee, or lessor of rehabilitated real property. In addition, the application must include a sworn statement signed by the chief executive officer of the city, county, other governmental agency, or nonprofit community-based organization seeking a refund which states that

the building materials for which a refund is sought were paid for from the funds of a community development block grant, State Housing Initiatives Partnership Program, or similar grant or loan program.

3. Within 10 working days after receipt of an application, the governing body or enterprise zone development agency shall review the application to determine if it contains all the information required pursuant to subparagraph 1. or subparagraph 2. and meets the criteria set out in this paragraph. The governing body or agency shall certify all applications that contain the information required pursuant to subparagraph 1. or subparagraph 2. and meet the criteria set out in this paragraph as eligible to receive a refund. If applicable, the governing body or agency shall also certify if 20 percent of the employees of the business are residents of an enterprise zone, excluding temporary and part-time employees. The certification shall be in writing, and a copy of the certification shall be transmitted to the executive director of the Department of Revenue. The applicant shall be responsible for forwarding a certified application to the department within the time specified in subparagraph 4.

4. An application for a refund pursuant to this paragraph must be submitted to the department within 6 months after the rehabilitation of the property is deemed to be substantially completed by the local building code inspector or by September 1 after the rehabilitated property is first subject to assessment.

5. The provisions of s. 212.095 do not apply to any refund application made pursuant to this paragraph. Not more than one

exemption through a refund of previously paid taxes for the rehabilitation of real property shall be permitted for any single parcel of property unless there is a change in ownership, a new lessor, or a new lessee of the real property. No refund shall be granted pursuant to this paragraph unless the amount to be refunded exceeds $500. No refund granted pursuant to this paragraph shall exceed the lesser of 97 percent of the Florida sales or use tax paid on the cost of the building materials used in the rehabilitation of the real property as determined pursuant to sub-subparagraph 1.e. or $5,000, or, if no less than 20 percent of the employees of the business are residents of an enterprise zone, excluding temporary and part-time employees, the amount of refund granted pursuant to this paragraph shall not exceed the lesser of 97 percent of the sales tax paid on the cost of such building materials or $10,000. A refund approved pursuant to this paragraph shall be made within 30 days of formal approval by the department of the application for the refund. This subparagraph shall apply retroactively to July 1, 2005.

6. The department shall adopt rules governing the manner and form of refund applications and may establish guidelines as to the requisites for an affirmative showing of qualification for exemption under this paragraph.

7. The department shall deduct an amount equal to 10 percent of each refund granted under the provisions of this paragraph from the amount transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund pursuant to s. 212.20 for the county area in which the rehabilitated real property is

located and shall transfer that amount to the General Revenue Fund.

8. For the purposes of the exemption provided in this paragraph:

a. "Building materials" means tangible personal property which becomes a component part of improvements to real property.

b. "Real property" has the same meaning as provided in s. 192.001(12).

c. "Rehabilitation of real property" means the reconstruction, renovation, restoration, rehabilitation, construction, or expansion of improvements to real property.

d. "Substantially completed" has the same meaning as provided in s. 192.042(1).

9. This paragraph expires on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

Section 4. Paragraphs (a) and (e) of subsection (1) and paragraph (e) of subsection (3) of section 212.096, Florida Statutes, are amended to read:

212.096 Sales, rental, storage, use tax; enterprise zone jobs credit against sales tax.--

(1) For the purposes of the credit provided in this section:

(a) "Eligible business" means any sole proprietorship, firm, partnership, corporation, bank, savings association, estate, trust, business trust, receiver, syndicate, or other group or combination, or successor business, located in an enterprise zone. The business must demonstrate to the department that, on the date of application, the total number of full-time

jobs defined under paragraph (d) is greater than the total was ~~has increased from the average of the previous~~ 12 months prior to that date. An eligible business does not include any business which has claimed the credit permitted under s. 220.181 for any new business employee first beginning employment with the business after July 1, 1995.

(e) "New job has been created" means that, on the date of application, the total number of full-time jobs is greater than the total was ~~has increased in an enterprise zone from the average of the previous~~ 12 months prior to that date, as demonstrated to the department by a business located in the enterprise zone.

A person shall be deemed to be employed if the person performs duties in connection with the operations of the business on a regular, full-time basis, provided the person is performing such duties for an average of at least 36 hours per week each month. The person must be performing such duties at a business site located in the enterprise zone.

(3) In order to claim this credit, an eligible business must file under oath with the governing body or enterprise zone development agency having jurisdiction over the enterprise zone where the business is located, as applicable, a statement which includes:

(e) Demonstration to the department that, on the date of application, the total number of full-time jobs defined under paragraph (1)(d) is greater than the total was ~~has increased in~~

~~an enterprise zone from the average of the previous~~ 12 months prior to that date.

Section 5. Paragraph (a) of subsection (1) of section 220.13, Florida Statutes, is reenacted and amended to read:

220.13 "Adjusted federal income" defined.--

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) Additions.--There shall be added to such taxable income:

1. The amount of any tax upon or measured by income, excluding taxes based on gross receipts or revenues, paid or accrued as a liability to the District of Columbia or any state of the United States which is deductible from gross income in the computation of taxable income for the taxable year.

2. The amount of interest which is excluded from taxable income under s. 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under s. 265 of the Internal Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the taxpayer pays tax under s. 220.11(3).

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the

net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

4. That portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.181. ~~The provisions of~~ This subparagraph shall expire ~~and be void~~ on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act ~~June 30, 2005~~.

5. That portion of the ad valorem school taxes paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.182. ~~The provisions of~~ This subparagraph shall expire ~~and be void~~ on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act ~~June 30, 2005~~.

6. The amount of emergency excise tax paid or accrued as a liability to this state under chapter 221 which tax is deductible from gross income in the computation of taxable income for the taxable year.

7. That portion of assessments to fund a guaranty association incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year.

8. In the case of a nonprofit corporation which holds a pari-mutuel permit and which is exempt from federal income tax as a farmers' cooperative, an amount equal to the excess of the gross income attributable to the pari-mutuel operations over the attributable expenses for the taxable year.

9. The amount taken as a credit for the taxable year under s. 220.1895.

10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.

11. The amount taken as a credit for the taxable year under s. 220.187.

Section 6. Paragraph (a) of subsection (1) and paragraph (f) of subsection (2) of section 220.181, Florida Statutes, are amended to read:

220.181 Enterprise zone jobs credit.--

(1)(a) There shall be allowed a credit against the tax imposed by this chapter to any business located in an enterprise zone which demonstrates to the department that, on the date of application, the total number of full-time jobs is greater than the total was ~~has increased from the average of the previous~~ 12 months prior to that date. The credit shall be computed as 20 percent of the actual monthly wages paid in this state to each new employee hired when a new job has been created, as defined under s. 220.03(1)(ff), unless the business is located in a rural enterprise zone, pursuant to s. 290.004(6), in which case the credit shall be 30 percent of the actual monthly wages paid. If no less than 20 percent of the employees of the business are residents of an enterprise zone, excluding temporary and part-time employees, the credit shall be computed as 30 percent of the actual monthly wages paid in this state to each new employee hired when a new job has been created, unless the business is located in a rural enterprise zone, in which case the credit shall be 45 percent of the actual monthly wages paid, for a period of up to 24 consecutive months. If the new employee hired

when a new job is created is a participant in the welfare transition program, the following credit shall be a percent of the actual monthly wages paid: 40 percent for $4 above the hourly federal minimum wage rate; 41 percent for $5 above the hourly federal minimum wage rate; 42 percent for $6 above the hourly federal minimum wage rate; 43 percent for $7 above the hourly federal minimum wage rate; and 44 percent for $8 above the hourly federal minimum wage rate.

(2) When filing for an enterprise zone jobs credit, a business must file under oath with the governing body or enterprise zone development agency having jurisdiction over the enterprise zone where the business is located, as applicable, a statement which includes:

(f) Demonstration to the department that, on the date of application, the total number of full-time jobs is greater than the total was ~~has increased from the average of the previous~~ 12 months prior to that date.

Section 7. Paragraph (c) is added to subsection (6) of section 290.0055, Florida Statutes, to read:

290.0055 Local nominating procedure.--

(6)

(c) At least 90 days before adopting a resolution seeking a change in the boundary of an enterprise zone, the governing body shall include in a notice of the meeting at which the resolution will be considered an explanation that a change in the boundary of an enterprise zone will be considered and that the change may result in loss of enterprise zone eligibility for the area affected by the boundary change.

Section 8. (1) Notwithstanding the provisions of s. 212.08(5)(g), Florida Statutes, as amended by this act, a business developing a project involving the rehabilitation of real property that has been excluded from an enterprise zone because of the redesignation requirements of s. 290.012 or s. 290.0065, Florida Statutes, shall remain eligible to apply for the building materials tax exemption under s. 212.08(5)(g), Florida Statutes, for that project through December 31, 2007, if the following requirements are met:

(a) The project must have been located in an enterprise zone on or before December 31, 2005.

(b) The project must have a duration extending beyond December 31, 2005.

(c) The project must have been excluded from the enterprise zone due to the portion of the enterprise zone in which the project is located not meeting the pervasive poverty rate requirements of s. 290.0058(2)(a) or (b), Florida Statutes.

(d) The difference between the pervasive poverty rate requirements of s. 290.0058(2)(a), Florida Statutes, and the actual poverty rate in the area in which the project is located must be 5 percentage points or less.

(e) The business must apply for a certificate of eligibility for the project with the enterprise zone development agency by November 1, 2006, and demonstrate that the project meets the requirements of this section.

(f) The enterprise zone development agency must provide a copy of the certificate of eligibility to the Department of Revenue.

(2) The provisions of this section are remedial in nature and shall apply retroactively to December 31, 2005. This section is repealed December 31, 2007.

Section 9. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7167 PCB GM 06-01 Growth Management
SPONSOR(S): Growth Management Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Growth Management Committee	10 Y, 0 N	Grayson	Grayson
1) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
2) State Infrastructure Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 7167 (formerly PCB GM-06-01) is the glitch bill for CS/CS/CS SB 360 (2005), ch. 2005-290, L.O.F., the Act, relating to infrastructure planning and funding. The bill:

- Conforms terminology to the phrase "proportionate fair-share mitigation."
- Corrects cross-references.
- Merges language into one provision relating to the public schools interlocal agreement.
- Provides that the "under actual-construction" requirement of transportation facility concurrency is met when construction funding needed is provided in the first 3 years of the Department of Transportation's (DOT) work plan.
- Requires DOT to publish and distribute, after public workshops, policy guidelines to assist local governments in planning to assess and mitigate impacts of proposed concurrency management areas.
- Provides a consequence for failure to timely adopt the local government proportionate fair-share mitigation methodology and to include it into its transportation concurrency management plan.
- Requires DOT to concur or withhold its concurrence, within 30 days, with the local government's plan for mitigation of impacts to the Strategic Intermodal System (SIS) from proposed transportation exception areas.
- Corrects, adjusts, or readdresses a number of funding issues as follows:
  - Non-recurring SIS Appropriation.
  - State Infrastructure Bank non-recurring transfer.
  - Classrooms for Kids appropriations recurring and non-recurring appropriations.
  - High Growth District Capital Outlay Assistance Grant Program recurring appropriation.
  - Century Commission for a Sustainable Florida recurring appropriation.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

This bill addresses inadvertent errors and other glitches contained in ch. 2005-290, L.O.F., the growth management act of the 2005 Legislative Session.

Background

The 2005 Legislature enacted ch. 2005-290, L.O.F. (the Act), relating to infrastructure planning and funding. The Act was the subject of a conference committee during the last two days of the 2005 Session and was the last bill to pass both houses during the last hour of that Session. As a result, the Act contains a number of matters that may require correction or clarification.

Effect of Proposed Changes

Terminology for Proportionate Share

As outlined in the table below, the Act utilizes seven different terms to refer to the concept of "proportionate fair-share mitigation." The Florida Department of Transportation (DOT) utilized the phrase "proportionate fair-share mitigation" in their development of the model ordinance required in s. 163.3180(16(a), F.S., as a result of the Act. That phrase appears to best represent the concepts embodied in the Act.

Act Section	Statute Section	Term(s) Used
1	163.3164(32)	"proportionate share"
5	163.3180(13)(e)	"mitigation proportionate to" & "proportionate-share mitigation"
5	163.3180(13)(e)1	"proportionate – share mitigation"
5	163.3180(13)(e)2	"proportionate – share mitigation"
5	163.3180(13)(e)3	"proportionate – share mitigation"
	163.3180(16)	"proportionate fair – share mitigation"
5	163.3180(16)(a)	"proportionate fair – share mitigation"
5	163.3180(16)(b)1	"proportionate fair – share mitigation" & "proportionate fair – share contributions"
5	163.3180(16)(b)2	"proportionate fair-share mitigation"
5	163.3180(16)(c)	"proportionate fair – share mitigation" & "proportionate fair-share contribution"
5	163.3180(16)(f)	"proportionate share agreement" & "proportionate share"
17	380.06(24)(l), (m), & (n)	"proportionate share"

Cross-references

The Act contains a number of cross-references that are inaccurate and should be corrected as outlined below.

- Correction: In s. 163.3177(13)(c)4, F.S., the cross-reference to "subsection (2)" should be "subsection (14)".

  Explanation: The section addresses the topics which a local government must discuss as part of the workshops and public meetings for the development of a community vision. Specifically, this reference is to the designation of an urban service boundary, which is referred to in subsection (14), and not subsection (2).

- Correction: In s. 163.3180(13)(f)1., F.S., the citation to s. 163.31777(6), F.S., should be "163.31777, F.S."

  Explanation: Section 163.3180(13)(f)1., F.S., relates to an exception for municipalities from being a signatory to the public school interlocal agreement. The citation in question was intended to reference other provisions of the statute that established the requirement to enter into the interlocal agreement. The erroneous citation refers to an exemption from the public school interlocal agreement requirements; and should rather refer to the entire section itself, s. 163.31777, F.S.

- Correction: In s. 163.3180(16)(b)1., F.S., the citation to s. 163.164(32), F.S., should be "s. 163.3164(32), F.S."

  Explanation: Section 163.164(32), F.S., does not exist. The citation was intended to refer to the definition of "financially feasible" which is found at s. 163.3164(32), F.S.

- Correction: In s. 163.3184(17), F.S., the citation to s. 163.31773(13), F.S., should be "s. 163.3177(13) F.S."

  Explanation: Section 163.31773 does not exist. The reference is to a local government that has adopted a community vision and an urban service boundary. Section 163.3177(13) F.S., and (14), F.S., relate to community vision and urban service boundaries, respectively.

- Correction: In s. 339.2819(4)(a)2., F.S., the citation to s. 163.3177(9) F.S., should be "s. 163.3180(9), F.S."

  Explanation: Section 339.2819(4)(a)2., F.S., relates to requirements for projects to be funded through the Transportation Regional Incentive Program. The citation in question was intended to relate to the statutory authority for a local government to implement a long-term concurrency management system. The erroneous citation, s. 163.3177(9), F.S., relates to adoption of minimum criteria for review and determination of compliance of local government plan elements. The correct citation, s. 163.3180(9), F.S., relates to long-term transportation and school concurrency management systems.

Funding Issues

The Act contains a number of appropriations and other funding matters that are inadvertent or otherwise need to be corrected, adjusted, or readdressed, as outlined below.

- Transportation Funding

  - Non-recurring Strategic Intermodal System (SIS) Appropriation - The Act appropriates $200 million for the 2005-2006 fiscal year to fund projects on the SIS. The intended funding level was $175 million non-recurring to correspond with a one-time $175 million transfer. The bill makes this correction.

- SIB non-recurring transfer – The Act contains language relating to a recurring appropriation for State Infrastructure Bank (SIB) in addition to $100M non-recurring for SIB appropriated correctly for fiscal year 2005-2006. The bill deletes that language found at s. 339.55(10), F.S.

- Education Funding
  - Classrooms for Kids appropriations – The Act contains a recurring appropriation for the Classrooms for Kids Program in the amount of $41.75 million. The Act also contains a $75 million dollar recurring transfer. The bill corrects the recurring appropriation to the intended level of $75 million. Additionally, the bill appropriates the nonrecurring sum of $33.35 million to account for the error in the FY 2005-2006 appropriation.

  - High Growth District Capital Outlay Assistance Grant Program - The Act contains a $30 million recurring appropriation for the High Growth District Capital Outlay Assistance Grant Program. The Governor vetoed this appropriation. The bill reappropriates the amount to support the grant program.

- Century Commission for a Sustainable Florida

  - Recurring appropriation - The Act contains both a non-recurring appropriation for FY 2005-2006 and a recurring transfer and appropriation of $250,000 for the Century Commission for a Sustainable Florida. The Governor vetoed the recurring appropriation. The bill reappropriates the recurring funding for this commission from funds appropriated to the Grants and Donations Trust Fund within the Department of Community Affairs.

Public Schools Interlocal Agreement

The bill amends several sections of existing law to merge the requirements for the public schools interlocal agreement into s. 163.31777, F.S. This was undertaken in an effort to provide a single statutory source for these requirements. Specifically, requirements currently existing in ss. 163.3180(13)(g), 1013.33(2) and (3), F.S., are combined and revised into the s. 163.31777, F.S.

Concurrency

Transportation Facilities: The bill provides that if the construction funding needed for transportation facilities is provided in the first 3 years of the DOT work program, then the "under-actual-construction" requirement of s. 163.3180(2)(c), F.S., is satisfied.

Impacts to the Strategic Intermodal System

Transportation Concurrency Exception Areas: The bill provides that DOT must publish and distribute, after publicly noticed workshops, policy guidelines containing criteria and options to assist local government in planning to assess and mitigate impacts of a proposed concurrency exception area as described in ss. 163.3180(5)(f) and (7), F.S.

Required Adoption of a Proportionate Fair-Share Mitigation Methodology and Transportation Concurrency Management System

The bill provides a consequence for the failure of local government to meet current law to timely adopt a methodology for assessing proportionate fair-share mitigation; and for failure to timely include its methodology into its transportation concurrency management system. The deadline for those local government actions is December 1, 2006. The consequence provided is the inability to impose a transportation impact fee.

DOT Comments on Proposed Transportation Concurrency Exception Areas

The Act provides that a local government proposing a transportation concurrency exception area must confer with the DOT regarding impacts to, and mitigation of impacts to, SIS facilities. The bill provides that the DOT must concur or withhold its concurrence with the mitigation of development impacts to facilities on the SIS within 30 days of the date of submission. If DOT fails to respond within the allotted time period, then the agency is deemed to have concurred.

C. SECTION DIRECTORY:

Section 1 - Amends s. 163.3164(32), F.S., correcting terminology.

Section 2 – Amends s. 163.3177(13)(c), F.S., correcting cross-reference.

Section 3 – Amends ss. 163.31777, F.S., relating to public schools interlocal agreements.

Section 4 – Amends ss. 163.3180, F.S., relating to concurrency.

Section 5 – Amends s. 163.3184(17), F.S., relating to adoption and amendment of comprehensive plans.

Section 6 – Amends s. 339.2819(4)(a), F.S., relating to the Transportation Regional Incentive Program.

Section 7 – Amends s. 339.55, F.S., relating to the state-funded infrastructure bank; and correcting an appropriations error.

Section 8 – Amends ss. 380.06(24)(l), (m) and (n), F.S., relating to developments of regional impact; correcting terminology.

Section 9 – Amends ss. 1013.33(2), (3), and (12), F.S., relating to the coordination of school planning with local governments.

Section 10 – Amends s. 1013.65(2)(a), F.S., relating to the Public Education Capital Outlay and Debt Service Trust Fund; correcting an appropriation for the Classrooms for Kids Program.

Section 11 – Amends s. 27 of ch. 2005-290, L.O.F., relating to appropriations.

Section 12 – Creates appropriations.

Section 13 - Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have an impact on state revenues.

2. Expenditures:

   The bill contains appropriations as follows

   - Corrects non-recurring SIS appropriation from $200 million to $175 million.
   - Deletes s. 339.55(10), F.S., relating to a recurring SIB appropriation.
   - Corrects the recurring Classroom for Kids appropriation from $41.75 to $75 million.

- Creates a nonrecurring $33.35 million appropriation for Classrooms for Kids.
- Creates a $30 million recurring appropriation for the High Growth District Capital Outlay Assistance Grant Program.
- Creates a recurring $250,000 appropriation for the Century Commission for a Sustainable Florida.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. The bill provides the potential for some local governments to benefit from appropriations to both the Classrooms for Kids Program and the High Growth County District Capital Outlay Assistance Program. Counties that fail to enact the proportionate share ordinance may loose out on some impact fee revenues.

2. Expenditures:

Indeterminate. While the bill strengthens certain timing requirements for local government planning related activities, the requirement to undertake those activities exists in current law.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The bill both strengthens the timing requirements for certain local government actions and appropriates funding which provides the potential for some local government benefits. Both of these features may result in either advancing or delaying local development activities depending upon specific local circumstances.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

The bill does not appear to raise any constitutional issues.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 21, 2006, the Growth Management Committee adopted one amendment. The amendment removed the deletion of s. 163.31777(3)(b) and (c), F.S. from the bill.

A bill to be entitled

An act relating to growth management; amending s. 163.3164, F.S.; revising a definition; amending s. 163.3177, F.S.; correcting a cross-reference; amending s. 163.31777, F.S.; revising requirements and procedures for public schools interlocal agreements; amending s. 163.3180, F.S.; revising concurrency requirements and procedures; amending ss. 163.3184 and 339.2819, F.S.; correcting cross-references; amending s. 339.55, F.S.; deleting an annual appropriation from the State Transportation Trust Fund for State Infrastructure Bank purposes; amending s. 380.06, F.S.; revising certain statutory exemption provisions for developments of regional impact; amending s. 1013.33, F.S.; revising requirements and procedures for coordination of planning with local governing bodies; amending s. 1013.65, F.S.; revising an appropriation from the Public Education Capital Outlay and Debt Service Trust Fund to the Classroom for Kids Program; amending s. 27, ch. 2005-290, Laws of Florida; revising an appropriation from the State Transportation Trust Fund for Florida Strategic Intermodal System purposes; providing appropriations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (32) of section 163.3164, Florida Statutes, is amended to read:

163.3164 Local Government Comprehensive Planning and Land Development Regulation Act; definitions.--As used in this act:

(32) "Financial feasibility" means that sufficient revenues are currently available or will be available from committed funding sources for the first 3 years, or will be available from committed or planned funding sources for years 4 and 5, of a 5-year capital improvement schedule for financing capital improvements, such as ad valorem taxes, bonds, state and federal funds, tax revenues, impact fees, and developer contributions, which are adequate to fund the projected costs of the capital improvements identified in the comprehensive plan necessary to ensure that adopted level-of-service standards are achieved and maintained within the period covered by the 5-year schedule of capital improvements. The requirement that level-of-service standards be achieved and maintained shall not apply if the proportionate fair-share mitigation ~~proportionate share~~ process set forth in s. 163.3180(12) and (16) is used.

Section 2. Paragraph (c) of subsection (13) of section 163.3177, Florida Statutes, is amended to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.--

(13) Local governments are encouraged to develop a community vision that provides for sustainable growth, recognizes its fiscal constraints, and protects its natural resources. At the request of a local government, the applicable regional planning council shall provide assistance in the development of a community vision.

(c) As part of the workshops and public meetings, the local government must discuss strategies for addressing the topics discussed under paragraph (b), including:

1. Strategies to preserve open space and environmentally sensitive lands, and to encourage a healthy agricultural economy, including innovative planning and development strategies, such as the transfer of development rights;

2. Incentives for mixed-use development, including increased height and intensity standards for buildings that provide residential use in combination with office or commercial space;

3. Incentives for workforce housing;

4. Designation of an urban service boundary pursuant to subsection (14) ~~(2)~~; and

5. Strategies to provide mobility within the community and to protect the Strategic Intermodal System, including the development of a transportation corridor management plan under s. 337.273.

Section 3. Subsections (1) and (2), paragraph (a) of subsection (3), and subsection (4) of section 163.31777, Florida Statutes, are amended to read:

163.31777 Public schools interlocal agreement.--

(1)(a) The district school board, county, and nonexempt municipalities located within the geographic area of a school district shall enter into an interlocal agreement ~~with the district school board~~ which jointly establishes the specific ways in which the plans and processes of the district school board and the local governments are to be coordinated. ~~The~~

~~interlocal agreements shall be submitted to the state land planning agency and the Office of Educational Facilities and the SMART Schools Clearinghouse in accordance with a schedule published by the state land planning agency.~~

~~(b) The schedule must establish staggered due dates for submission of interlocal agreements that are executed by both the local government and the district school board, commencing on March 1, 2003, and concluding by December 1, 2004, and must set the same date for all governmental entities within a school district. However, if the county where the school district is located contains more than 20 municipalities, the state land planning agency may establish staggered due dates for the submission of interlocal agreements by these municipalities. The schedule must begin with those areas where both the number of districtwide capital outlay full-time equivalent students equals 80 percent or more of the current year's school capacity and the projected 5-year student growth is 1,000 or greater, or where the projected 5-year student growth rate is 10 percent or greater.~~

(b) ~~(c)~~ If the student population has declined over the 5-year period preceding the due date for submittal of an interlocal agreement by the local government and the district school board, the local government and the district school board may petition the state land planning agency for a waiver of one or more requirements of subsection (2). The waiver must be granted if the procedures called for in subsection (2) are unnecessary because of the school district's declining school age population, considering the district's 5-year facilities

work program prepared pursuant to s. 1013.35. The state land planning agency may modify or revoke the waiver upon a finding that the conditions upon which the waiver was granted no longer exist. The district school board and local governments must submit an interlocal agreement within 1 year after notification by the state land planning agency that the conditions for a waiver no longer exist.

(c) ~~(d) Interlocal agreements between local governments and district school boards adopted pursuant to s. 163.3177 before the effective date of this section must be updated and executed pursuant to the requirements of this section, if necessary. Amendments to interlocal agreements adopted pursuant to this section must be submitted to the state land planning agency within 30 days after execution by the parties for review consistent with this section.~~ Local governments and the district school board in each school district are encouraged to adopt a single updated interlocal agreement to which all join as parties. The state land planning agency shall assemble and make available model interlocal agreements meeting the requirements of this section and notify local governments and, jointly with the Department of Education, the district school boards of the requirements of this section, the dates for compliance, and the sanctions for noncompliance. The state land planning agency shall be available to informally review proposed interlocal agreements. If the state land planning agency has not received a proposed interlocal agreement for informal review, the state land planning agency shall, at least 60 days before the deadline for submission of the executed agreement, renotify the local

government and the district school board of the upcoming deadline and the potential for sanctions.

(2) The interlocal agreement must acknowledge the school board's constitutional and statutory obligations to provide a uniform system of free public schools on a countywide basis and the land use authority of local governments, including the authority to approve or deny comprehensive plan amendments and development orders. ~~At a minimum,~~ The interlocal agreement must ~~address interlocal agreement requirements in s. 163.3180(13)(g), except for exempt local governments as provided in s. 163.3177(12), and must~~ address the following issues:

(a) Mechanisms for coordinating the development, adoption, and amendment of each local government's public school facilities element with each other local government that is a party to the agreements and the plans of the school board to ensure a uniform districtwide school concurrency system.

(b) A process for developing siting criteria that encourages the location of public schools proximate to urban residential areas to the extent possible and seeks to collocate schools with other public facilities, including, but not limited to, parks, libraries, and community centers, to the extent possible.

(c) Uniform, districtwide, level-of-service standards for public schools of the same type and a process for modifying adopted level-of-service standards.

(d) A process for establishing a financially feasible public school capital facilities program and a process and schedule for incorporation of the public school capital

facilities program into the local government comprehensive plans on an annual basis.

(e) If school concurrency is to be applied on a less than districtwide basis in the form of concurrency service areas, criteria and standards for the establishment and modification of school concurrency service areas. The agreement must also establish a process and schedule for the mandatory incorporation of the school concurrency service areas and the criteria and standards for establishment of the service areas into the local government comprehensive plans. The agreement must ensure maximum use of school capacity, taking into account transportation costs and court-approved desegregation plans and other applicable factors.

(f) A uniform districtwide procedure for implementing school concurrency that provides for:

1. Evaluation of development applications for compliance with school concurrency requirements, including, but not limited to, information provided by the school board on affected schools.

2. Monitoring and evaluation of the school concurrency system.

(g) A process and uniform methodology for determining proportionate fair-share mitigation pursuant to s. 380.06.

(h) ~~(a)~~ A process by which each local government and the district school board agree and base their plans on consistent projections of the amount, type, and distribution of population growth and student enrollment. The geographic distribution of

jurisdiction-wide growth forecasts is a major objective of the process.

(i) ~~(b)~~ A process to coordinate and share information relating to existing and planned public school facilities, including school renovations and closures, and local government plans for development and redevelopment.

(j) ~~(c)~~ Participation by affected local governments with the district school board in the process of evaluating potential school closures, significant renovations to existing schools, and new school site selection before land acquisition. Local governments shall advise the district school board as to the consistency of the proposed closure, renovation, or new site with the local comprehensive plan, including appropriate circumstances and criteria under which a district school board may request an amendment to the comprehensive plan for school siting.

(k) ~~(d)~~ A process for determining the need for and timing of onsite and offsite improvements to support new, proposed expansion, or redevelopment of existing schools. The process must address identification of the party or parties responsible for the improvements.

~~(e) A process for the school board to inform the local government regarding the effect of comprehensive plan amendments on school capacity. The capacity reporting must be consistent with laws and rules relating to measurement of school facility capacity and must also identify how the district school board will meet the public school demand based on the facilities work program adopted pursuant to s. 1013.35.~~

(l) ~~(f)~~ Participation of the local governments in the preparation of the annual update to the district school board's 5-year district facilities work program and educational plant survey prepared pursuant to s. 1013.35.

(m) ~~(g)~~ A process for determining where and how joint use of either school board or local government facilities can be shared for mutual benefit and efficiency.

(n) ~~(h)~~ A procedure for the resolution of disputes between the district school board and local governments, which may include the dispute resolution processes contained in chapters 164 and 186.

(o) ~~(i)~~ An oversight process, including an opportunity for public participation, for the implementation of the interlocal agreement.

(p) A process for development of a public school facilities element pursuant to s. 163.3177(12).

(q) Provisions for siting and modification or enhancements to existing school facilities so as to encourage urban infill and redevelopment.

(r) A process for the use and conversion of historic school facilities that are no longer suitable for educational purposes, as determined by the district school board.

(s) A process for informing the local government regarding the effect of comprehensive plan amendments and rezonings on school capacity. The capacity reporting must be consistent with laws and rules relating to measurement of school facility capacity and must also identify how the district school board will meet the public school demand based on the facilities work

program adopted pursuant to s. 1013.35.

(t) A process to ensure an opportunity for the school board to review and comment on the effect of comprehensive plan amendments and rezonings on the public school facilities plan.

For those local governments that receive a waiver pursuant to subsection (1), the interlocal agreement shall not include the issues provided for in paragraphs (a), (c), (d), (e), (f), (g), and (p). For counties or municipalities that do not have a public school interlocal agreement or public school facility element, the assessment shall determine whether the local government continues to meet the criteria of s. 163.3177(12). If a county or municipality determines that it no longer meets the criteria, the county or municipality must adopt appropriate school concurrency goals, objectives, and policies in its plan amendments pursuant to the requirements of the public school facility element and enter into the existing interlocal agreement required by this section and s. 173.3177(6)(h)2. in order to fully participate in the school concurrency system.

(3)(a) The updated interlocal agreement adopted pursuant to the schedule adopted in accordance with s. 163.3177(12)(i) and any subsequent amendments must be submitted to the state land planning agency and the Office of Educational Facilities within 30 days after execution by the parties to the agreement for review consistent with this section. The office ~~and SMART Schools Clearinghouse~~ shall submit any comments or concerns regarding the executed interlocal agreement or agreement amendments to the state land planning agency within 30 days

after receipt of the executed interlocal agreement or agreement amendments. The state land planning agency shall review the updated executed interlocal agreement or agreement amendments to determine whether they are ~~it is~~ consistent with the requirements of subsection (2), the adopted local government comprehensive plan, and other requirements of law. Within 60 days after receipt of an updated executed interlocal agreement or agreement amendments, the state land planning agency shall publish a notice on the agency's Internet website that states ~~of intent in the Florida Administrative Weekly and shall post a copy of the notice on the agency's Internet site. The notice of intent must state~~ whether the interlocal agreement is consistent or inconsistent with the requirements of subsection (2) and this subsection, as appropriate.

(4) If an updated executed interlocal agreement is not timely submitted to the state land planning agency for review, the state land planning agency shall, within 15 working days after the deadline for submittal, issue to the local government and the district school board a Notice to Show Cause why sanctions should not be imposed for failure to submit an executed interlocal agreement by the deadline established by the agency. The agency shall forward the notice and the responses to the Administration Commission, which may enter a final order citing the failure to comply and imposing sanctions against the local government and district school board by directing the appropriate agencies to withhold at least 5 percent of state funds pursuant to s. 163.3184(11) and by directing the Department of Education to withhold from the district school

board at least 5 percent of funds for school construction available pursuant to ss. 1013.65, 1013.68, 1013.70, and 1013.72.

Section 4. Paragraph (c) of subsection (2), paragraph (f) of subsection (5), subsection (7), paragraphs (e), (f), (g), and (h) of subsection (13), and paragraphs (a), (b), (c), (e), and (f) of subsection (16) of section 163.3180, Florida Statutes, are amended to read:

163.3180 Concurrency.--

(2)

(c) Consistent with the public welfare, and except as otherwise provided in this section, transportation facilities needed to serve new development shall be in place or under actual construction within 3 years after the local government approves a building permit or its functional equivalent that results in traffic generation. For purposes of this paragraph and all provisions relating to transportation concurrency, if the construction funding needed for facilities is provided in the first 3 years of the Department of Transportation's work program or the local government's schedule of capital improvements, the under-actual-construction requirements of this paragraph shall be deemed to have been met.

(5)

(f) Prior to the designation of a concurrency exception area, the Department of Transportation shall be consulted by the local government to assess the impact that the proposed exception area is expected to have on the adopted level-of-service standards established for Strategic Intermodal System

facilities, as defined in s. 339.64, and roadway facilities funded in accordance with s. 339.2819. Further, the local government shall, in cooperation with the Department of Transportation, develop a plan to mitigate ~~any~~ impacts to the Strategic Intermodal System, including, if appropriate, the development of a long-term concurrency management system pursuant to subsection (9) and s. 163.3177(3)(d). The exceptions may be available only within the specific geographic area of the jurisdiction designated in the plan. Pursuant to s. 163.3184, any affected person may challenge a plan amendment establishing these guidelines and the areas within which an exception could be granted. By October 1, 2006, the Department of Transportation, after publicly noticed workshops, shall publish and distribute to local governments a policy guideline containing criteria and options to assist local governments in planning to assess and mitigate the impacts of a proposed concurrency exception area as described in this paragraph.

(7) In order to promote infill development and redevelopment, one or more transportation concurrency management areas may be designated in a local government comprehensive plan. A transportation concurrency management area must be a compact geographic area with an existing network of roads where multiple, viable alternative travel paths or modes are available for common trips. A local government may establish an areawide level-of-service standard for such a transportation concurrency management area based upon an analysis that provides for a justification for the areawide level of service, how urban infill development or redevelopment will be promoted, and how

mobility will be accomplished within the transportation concurrency management area. Prior to the designation of a concurrency management area, the Department of Transportation shall be consulted by the local government to assess the impact that the proposed concurrency management area is expected to have on the adopted level-of-service standards established for Strategic Intermodal System facilities, as defined in s. 339.64, and roadway facilities funded in accordance with s. 339.2819. Further, the local government shall, in cooperation with the Department of Transportation, develop a plan to mitigate any impacts to the Strategic Intermodal System, including, if appropriate, the development of a long-term concurrency management system pursuant to subsection (9) and s. 163.3177(3)(d). Transportation concurrency management areas existing prior to July 1, 2005, shall meet, at a minimum, the provisions of this section by July 1, 2006, or at the time of the comprehensive plan update pursuant to the evaluation and appraisal report, whichever occurs last. The state land planning agency shall amend chapter 9J-5, Florida Administrative Code, to be consistent with this subsection. By October 1, 2006, the Department of Transportation, after publicly noticed workshops, shall publish and distribute to local governments a policy guideline containing criteria and options to assist local governments in planning to assess and mitigate the impacts of a proposed concurrency exception area as described in this paragraph.

(13) School concurrency shall be established on a districtwide basis and shall include all public schools in the

district and all portions of the district, whether located in a municipality or an unincorporated area unless exempt from the public school facilities element pursuant to s. 163.3177(12). The application of school concurrency to development shall be based upon the adopted comprehensive plan, as amended. All local governments within a county, except as provided in paragraph (f), shall adopt and transmit to the state land planning agency the necessary plan amendments, along with the interlocal agreement, for a compliance review pursuant to s. 163.3184(7) and (8). The minimum requirements for school concurrency are the following:

(e) Availability standard.--Consistent with the public welfare, a local government may not deny an application for site plan, final subdivision approval, or the functional equivalent for a development or phase of a development authorizing residential development for failure to achieve and maintain the level-of-service standard for public school capacity in a local school concurrency management system where adequate school facilities will be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval, or the functional equivalent. School concurrency shall be satisfied if the developer executes a legally binding commitment to provide proportionate fair-share mitigation against ~~proportionate to~~ the demand for public school facilities to be created by actual development of the property, including, but not limited to, the options described in subparagraph 1. Options for proportionate fair-share ~~proportionate-share~~ mitigation of impacts on public school facilities shall be

established in the public school facilities element and the interlocal agreement pursuant to s. 163.31777.

1. Appropriate proportionate fair-share mitigation options include the contribution of land; the construction, expansion, or payment for land acquisition or construction of a public school facility; or the creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity credits. Such options must include execution by the applicant and the local government of a binding development agreement that constitutes a legally binding commitment to pay proportionate fair-share ~~proportionate-share~~ mitigation for the additional residential units approved by the local government in a development order and actually developed on the property, taking into account residential density allowed on the property prior to the plan amendment that increased overall residential density. The district school board shall be a party to such an agreement. As a condition of its entry into such a development agreement, the local government may require the landowner to agree to continuing renewal of the agreement upon its expiration.

2. If the education facilities plan and the public educational facilities element authorize a contribution of land; the construction, expansion, or payment for land acquisition; or the construction or expansion of a public school facility, or a portion thereof, as proportionate fair-share ~~proportionate-share~~ mitigation, the local government shall credit such a contribution, construction, expansion, or payment toward any

other impact fee or exaction imposed by local ordinance for the same need, on a dollar-for-dollar basis at fair market value.

3. Any proportionate fair-share ~~proportionate share~~ mitigation must be directed by the school board toward a school capacity improvement identified in a financially feasible 5-year district work plan and which satisfies the demands created by that development in accordance with a binding developer's agreement.

4. This paragraph does not limit the authority of a local government to deny a development permit or its functional equivalent pursuant to its home rule regulatory powers, except as provided in this part.

(f) Intergovernmental coordination.--

1. When establishing concurrency requirements for public schools, a local government shall satisfy the requirements for intergovernmental coordination set forth in s. 163.3177(6)(h)1. and 2., except that a municipality is not required to be a signatory to the interlocal agreement required by ss. 163.3177(6)(h)2. and 163.31777~~(6)~~, as a prerequisite for imposition of school concurrency, and as a nonsignatory, shall not participate in the adopted local school concurrency system, if the municipality meets all of the following criteria for having no significant impact on school attendance:

a. The municipality has issued development orders for fewer than 50 residential dwelling units during the preceding 5 years, or the municipality has generated fewer than 25 additional public school students during the preceding 5 years.

b. The municipality has not annexed new land during the preceding 5 years in land use categories which permit residential uses that will affect school attendance rates.

c. The municipality has no public schools located within its boundaries.

d. At least 80 percent of the developable land within the boundaries of the municipality has been built upon.

2. A municipality which qualifies as having no significant impact on school attendance pursuant to the criteria of subparagraph 1. must review and determine at the time of its evaluation and appraisal report pursuant to s. 163.3191 whether it continues to meet the criteria pursuant to s. 163.31777(6). If the municipality determines that it no longer meets the criteria, it must adopt appropriate school concurrency goals, objectives, and policies in its plan amendments based on the evaluation and appraisal report, and enter into the existing interlocal agreement required by ss. 163.3177(6)(h)2. and 163.31777, in order to fully participate in the school concurrency system. If such a municipality fails to do so, it will be subject to the enforcement provisions of s. 163.3191.

~~(g) Interlocal agreement for school concurrency. When establishing concurrency requirements for public schools, a local government must enter into an interlocal agreement that satisfies the requirements in ss. 163.3177(6)(h)1. and 2. and 163.31777 and the requirements of this subsection. The interlocal agreement shall acknowledge both the school board's constitutional and statutory obligations to provide a uniform system of free public schools on a countywide basis, and the~~

~~land use authority of local governments, including their authority to approve or deny comprehensive plan amendments and development orders. The interlocal agreement shall be submitted to the state land planning agency by the local government as a part of the compliance review, along with the other necessary amendments to the comprehensive plan required by this part. In addition to the requirements of ss. 163.3177(6)(h) and 163.31777, the interlocal agreement shall meet the following requirements:~~

~~1. Establish the mechanisms for coordinating the development, adoption, and amendment of each local government's public school facilities element with each other and the plans of the school board to ensure a uniform districtwide school concurrency system.~~

~~2. Establish a process for the development of siting criteria which encourages the location of public schools proximate to urban residential areas to the extent possible and seeks to collocate schools with other public facilities such as parks, libraries, and community centers to the extent possible.~~

~~3. Specify uniform, districtwide level of service standards for public schools of the same type and the process for modifying the adopted level of service standards.~~

~~4. Establish a process for the preparation, amendment, and joint approval by each local government and the school board of a public school capital facilities program which is financially feasible, and a process and schedule for incorporation of the public school capital facilities program into the local government comprehensive plans on an annual basis.~~

~~5. Define the geographic application of school concurrency. If school concurrency is to be applied on a less than districtwide basis in the form of concurrency service areas, the agreement shall establish criteria and standards for the establishment and modification of school concurrency service areas. The agreement shall also establish a process and schedule for the mandatory incorporation of the school concurrency service areas and the criteria and standards for establishment of the service areas into the local government comprehensive plans. The agreement shall ensure maximum utilization of school capacity, taking into account transportation costs and court-approved desegregation plans, as well as other factors. The agreement shall also ensure the achievement and maintenance of the adopted level of service standards for the geographic area of application throughout the 5 years covered by the public school capital facilities plan and thereafter by adding a new fifth year during the annual update.~~

~~6. Establish a uniform districtwide procedure for implementing school concurrency which provides for:~~

~~a. The evaluation of development applications for compliance with school concurrency requirements, including information provided by the school board on affected schools, impact on levels of service, and programmed improvements for affected schools and any options to provide sufficient capacity;~~

~~b. An opportunity for the school board to review and comment on the effect of comprehensive plan amendments and rezonings on the public school facilities plan; and~~

~~c. The monitoring and evaluation of the school concurrency system.~~

~~7. Include provisions relating to amendment of the agreement.~~

~~8. A process and uniform methodology for determining proportionate share mitigation pursuant to subparagraph (e)1.~~

(g) ~~(h)~~ Local government authority.--This subsection does not limit the authority of a local government to grant or deny a development permit or its functional equivalent prior to the implementation of school concurrency.

(16) It is the intent of the Legislature to provide a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors. The methodology used to calculate proportionate fair-share mitigation under this section shall be as provided for in subsection (12).

(a) By December 1, 2006, each local government shall adopt by ordinance a methodology for assessing proportionate fair-share mitigation options. A local government that fails to adopt a methodology for assessing proportionate fair-share mitigation options by December 1, 2006, may not impose any transportation impact fee after that date until such methodology has been adopted. By December 1, 2005, the Department of Transportation shall develop a model transportation concurrency management ordinance with methodologies for assessing proportionate fair-share mitigation options.

(b)1. In its transportation concurrency management system, a local government shall, by December 1, 2006, include

methodologies that will be applied to calculate proportionate fair-share mitigation. A local government that fails to include such methodologies by December 1, 2006, may not impose any transportation impact fee after that date until such methodologies have been adopted. A developer may choose to satisfy all transportation concurrency requirements by contributing or paying proportionate fair-share mitigation if transportation facilities or facility segments identified as mitigation for traffic impacts are specifically identified for funding in the 5-year schedule of capital improvements in the capital improvements element of the local plan or the long-term concurrency management system or if such contributions or payments to such facilities or segments are reflected in the 5-year schedule of capital improvements in the next regularly scheduled update of the capital improvements element. Updates to the 5-year capital improvements element which reflect proportionate fair-share contributions may not be found not in compliance based on ss. 163.3164(32) ~~163.164(32)~~ and 163.3177(3) if additional contributions, payments or funding sources are reasonably anticipated during a period not to exceed 10 years to fully mitigate impacts on the transportation facilities.

2. Proportionate fair-share mitigation shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the local government's impact fee ordinance.

(c) Proportionate fair-share mitigation includes, without limitation, separately or collectively, private funds,

contributions of land, and construction and contribution of facilities and may include public funds as determined by the local government. The fair market value of the proportionate fair-share mitigation shall not differ based on the form of mitigation. A local government may not require a development to pay more than its proportionate fair-share mitigation ~~contribution~~ regardless of the method of mitigation.

(e) Mitigation for development impacts to facilities on the Strategic Intermodal System made pursuant to this subsection requires the concurrence of the Department of Transportation. The department has 30 days from the date of submission by the applicable local government to concur or withhold concurrence with the mitigation of development impacts to facilities on the Strategic Intermodal System. If the department does not respond within the 30-day period, the department is deemed to have concurred with the mitigation.

(f) If ~~In the event the~~ funds in an adopted 5-year capital improvements element are insufficient to fully fund construction of a transportation improvement required by the local government's concurrency management system, a local government and a developer may still enter into a binding proportionate fair-share mitigation ~~proportionate share~~ agreement authorizing the developer to construct that amount of development on which the proportionate fair-share mitigation ~~proportionate share~~ is calculated if the proportionate fair-share mitigation ~~proportionate share~~ amount in such agreement is sufficient to pay for one or more improvements which will, in the opinion of the governmental entity or entities maintaining the

transportation facilities, significantly benefit the impacted transportation system. The improvement or improvements funded by the proportionate fair-share mitigation ~~proportionate share~~ component must be adopted into the 5-year capital improvements schedule of the comprehensive plan at the next annual capital improvements element update.

Section 5. Subsection (17) of section 163.3184, Florida Statutes, is amended to read:

163.3184 Process for adoption of comprehensive plan or plan amendment.--

(17) A local government that has adopted a community vision and urban service boundary under s. 163.3177(13) ~~163.31773(13)~~ and (14) may adopt a plan amendment related to map amendments solely to property within an urban service boundary in the manner described in subsections (1), (2), (7), (14), (15), and (16) and s. 163.3187(1)(c)1.d. and e., 2., and 3., such that state and regional agency review is eliminated. The department may not issue an objections, recommendations, and comments report on proposed plan amendments or a notice of intent on adopted plan amendments; however, affected persons, as defined by paragraph (1)(a), may file a petition for administrative review pursuant to the requirements of s. 163.3187(3)(a) to challenge the compliance of an adopted plan amendment. This subsection does not apply to any amendment within an area of critical state concern, to any amendment that increases residential densities allowable in high-hazard coastal areas as defined in s. 163.3178(2)(h), or to a text change to the goals, policies, or objectives of the local government's

comprehensive plan. Amendments submitted under this subsection are exempt from the limitation on the frequency of plan amendments in s. 163.3187.

Section 6. Paragraph (a) of subsection (4) of section 339.2819, Florida Statutes, is amended to read:

339.2819 Transportation Regional Incentive Program.--

(4)(a) Projects to be funded with Transportation Regional Incentive Program funds shall, at a minimum:

1. Support those transportation facilities that serve national, statewide, or regional functions and function as an integrated regional transportation system.

2. Be identified in the capital improvements element of a comprehensive plan that has been determined to be in compliance with part II of chapter 163, after July 1, 2005, or to implement a long-term concurrency management system adopted by a local government in accordance with s. 163.3180(9) ~~163.3177(9)~~. Further, the project shall be in compliance with local government comprehensive plan policies relative to corridor management.

3. Be consistent with the Strategic Intermodal System Plan developed under s. 339.64.

4. Have a commitment for local, regional, or private financial matching funds as a percentage of the overall project cost.

Section 7. Subsection (10) of section 339.55, Florida Statutes, is amended to read:

339.55 State-funded infrastructure bank.--

~~(10) Funds paid into the State Transportation Trust Fund pursuant to s. 201.15(1)(d) for the purposes of the State Infrastructure Bank are hereby annually appropriated for expenditure to support that program.~~

Section 8. Paragraphs (l), (m), and (n) of subsection (24) of section 380.06, Florida Statutes, are amended to read:

380.06 Developments of regional impact.--

(24) STATUTORY EXEMPTIONS.--

(l) Any proposed development within an urban service boundary established under s. 163.3177(14) is exempt from the provisions of this section if the local government having jurisdiction over the area where the development is proposed has adopted the urban service boundary and has entered into a binding agreement with adjacent jurisdictions and the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities, and has adopted a proportionate fair-share mitigation ~~share~~ methodology pursuant to s. 163.3180(16).

(m) Any proposed development within a rural land stewardship area created under s. 163.3177(11)(d) is exempt from the provisions of this section if the local government that has adopted the rural land stewardship area has entered into a binding agreement with jurisdictions that would be impacted and the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities, and has adopted a proportionate fair-share mitigation ~~share~~ methodology pursuant to s. 163.3180(16).

(n) Any proposed development or redevelopment within an area designated as an urban infill and redevelopment area under s. 163.2517 is exempt from the provisions of this section if the local government has entered into a binding agreement with jurisdictions that would be impacted and the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities, and has adopted a proportionate fair-share mitigation ~~share~~ methodology pursuant to s. 163.3180(16).

Section 9. Subsections (2), (3), and (12) of section 1013.33, Florida Statutes, are amended to read:

1013.33 Coordination of planning with local governing bodies.--

(2)(a) The school board, county, and nonexempt municipalities located within the geographic area of a school district shall enter into an interlocal agreement that jointly establishes the specific ways in which the plans and processes of the district school board and the local governments are to be coordinated. Any updated ~~The~~ interlocal agreements and agreement amendments shall be submitted to the state land planning agency and the Office of Educational Facilities ~~and the SMART Schools Clearinghouse~~ in accordance with a schedule published by the state land planning agency pursuant to s. 163.3177(12)(i).

~~(b) The schedule must establish staggered due dates for submission of interlocal agreements that are executed by both the local government and district school board, commencing on March 1, 2003, and concluding by December 1, 2004, and must set the same date for all governmental entities within a school~~

~~district. However, if the county where the school district is located contains more than 20 municipalities, the state land planning agency may establish staggered due dates for the submission of interlocal agreements by these municipalities. The schedule must begin with those areas where both the number of districtwide capital outlay full-time equivalent students equals 80 percent or more of the current year's school capacity and the projected 5 year student growth rate is 1,000 or greater, or where the projected 5 year student growth rate is 10 percent or greater.~~

(b) ~~(c)~~ If the student population has declined over the 5-year period preceding the due date for submittal of an interlocal agreement by the local government and the district school board, the local government and district school board may petition the state land planning agency for a waiver of one or more of the requirements of subsection (3). The waiver must be granted if the procedures called for in subsection (3) are unnecessary because of the school district's declining school age population, considering the district's 5-year work program prepared pursuant to s. 1013.35. The state land planning agency may modify or revoke the waiver upon a finding that the conditions upon which the waiver was granted no longer exist. The district school board and local governments must submit an interlocal agreement within 1 year after notification by the state land planning agency that the conditions for a waiver no longer exist.

(c) ~~(d) Interlocal agreements between local governments and district school boards adopted pursuant to s. 163.3177 before~~

~~the effective date of subsections (2)-(9) must be updated and executed pursuant to the requirements of subsections (2)-(9), if necessary. Amendments to interlocal agreements adopted pursuant to subsections (2)-(9) must be submitted to the state land planning agency within 30 days after execution by the parties for review consistent with subsections (3) and (4).~~ Local governments and the district school board in each school district are encouraged to adopt a single updated interlocal agreement in which all join as parties. The state land planning agency shall assemble and make available model interlocal agreements meeting the requirements of subsections (2)-(9) and shall notify local governments and, jointly with the Department of Education, the district school boards of the requirements of subsections (2)-(9), the dates for compliance, and the sanctions for noncompliance. The state land planning agency shall be available to informally review proposed interlocal agreements. If the state land planning agency has not received a proposed interlocal agreement for informal review, the state land planning agency shall, at least 60 days before the deadline for submission of the executed agreement, renotify the local government and the district school board of the upcoming deadline and the potential for sanctions.

(3) ~~At a minimum,~~ The interlocal agreement must address ~~interlocal agreement requirements in s. 163.3180(13)(g), except for exempt local governments as provided in s. 163.3177(12), and must address~~ the ~~following~~ issues specified in s. 163.31777(2).~~:~~

~~(a) A process by which each local government and the district school board agree and base their plans on consistent~~

~~projections of the amount, type, and distribution of population growth and student enrollment. The geographic distribution of jurisdiction wide growth forecasts is a major objective of the process.~~

~~(b) A process to coordinate and share information relating to existing and planned public school facilities, including school renovations and closures, and local government plans for development and redevelopment.~~

~~(c) Participation by affected local governments with the district school board in the process of evaluating potential school closures, significant renovations to existing schools, and new school site selection before land acquisition. Local governments shall advise the district school board as to the consistency of the proposed closure, renovation, or new site with the local comprehensive plan, including appropriate circumstances and criteria under which a district school board may request an amendment to the comprehensive plan for school siting.~~

~~(d) A process for determining the need for and timing of onsite and offsite improvements to support new construction, proposed expansion, or redevelopment of existing schools. The process shall address identification of the party or parties responsible for the improvements.~~

~~(e) A process for the school board to inform the local government regarding the effect of comprehensive plan amendments on school capacity. The capacity reporting must be consistent with laws and rules regarding measurement of school facility capacity and must also identify how the district school board~~

~~will meet the public school demand based on the facilities work program adopted pursuant to s. 1013.35.~~

~~(f) Participation of the local governments in the preparation of the annual update to the school board's 5 year district facilities work program and educational plant survey prepared pursuant to s. 1013.35.~~

~~(g) A process for determining where and how joint use of either school board or local government facilities can be shared for mutual benefit and efficiency.~~

~~(h) A procedure for the resolution of disputes between the district school board and local governments, which may include the dispute resolution processes contained in chapters 164 and 186.~~

~~(i) An oversight process, including an opportunity for public participation, for the implementation of the interlocal agreement.~~

(12) As early in the design phase as feasible and consistent with an interlocal agreement entered pursuant to subsections (2)-(8), but no later than 120 ~~90~~ days before commencing construction, the district school board shall in writing request a determination of consistency with the local government's comprehensive plan. The local governing body that regulates the use of land shall determine, in writing within 45 days after receiving the necessary information and a school board's request for a determination, whether a proposed educational facility is consistent with the local comprehensive plan and consistent with local land development regulations. If the determination is affirmative, school construction may

commence and further local government approvals are not required, except as provided in this section. Failure of the local governing body to make a determination in writing within 90 days after a district school board's request for a determination of consistency shall be considered an approval of the district school board's application. Campus master plans and development agreements must comply with the provisions of ss. 1013.30 and 1013.63.

Section 10. Paragraph (a) of subsection (2) of section 1013.65, Florida Statutes, is amended to read:

1013.65 Educational and ancillary plant construction funds; Public Education Capital Outlay and Debt Service Trust Fund; allocation of funds.--

(2)(a) The Public Education Capital Outlay and Debt Service Trust Fund shall be comprised of the following sources, which are hereby appropriated to the trust fund:

1. Proceeds, premiums, and accrued interest from the sale of public education bonds and that portion of the revenues accruing from the gross receipts tax as provided by s. 9(a)(2), Art. XII of the State Constitution, as amended, interest on investments, and federal interest subsidies.

2. General revenue funds appropriated to the fund for educational capital outlay purposes.

3. All capital outlay funds previously appropriated and certified forward pursuant to s. 216.301.

4.a. Funds paid pursuant to s. 201.15(1)(d).

b. The sum of <u>$75</u> ~~$41.75~~ million <u>from recurring funds in the Public Education Capital Outlay and Debt Service Trust Fund</u>

~~of such funds~~ shall be appropriated ~~annually~~ for expenditure to fund the Classrooms for Kids Program created in s. 1013.735 and shall be distributed as provided by that section.

Section 11. Paragraph (a) of subsection (2) of section 27 of chapter 2005-290, Laws of Florida, is amended to read:

Section 27.

(2) The following appropriations are made for the 2005-2006 fiscal year only on a nonrecurring basis:

(a) From the State Transportation Trust Fund in the Department of Transportation:

1. One hundred seventy-five ~~Two hundred~~ million dollars for the purposes specified in sections 339.61, 339.62, 339.63, and 339.64, Florida Statutes.

2. Two hundred seventy-five million dollars for the purposes specified in section 339.2819, Florida Statutes.

3. One hundred million dollars for the purposes specified in section 339.55, Florida Statutes.

4. Twenty-five million for the purposes specified in section 339.2817, Florida Statutes.

Section 12. (1) The sum of $33.35 million in nonrecurring funds is appropriated from the Public Education Capital Outlay and Debt Service Trust Fund to fund the Classrooms for Kids Program created in s. 1013.735, Florida Statutes.

(2) The sum of $30 million from the Public Education Capital Outlay and Debt Service Trust Fund is appropriated each year for expenditures to fund the High Growth District Capital Outlay Assistance Grant Program created in s. 1013.738, Florida Statutes, and shall be distributed as provided in that section.

(3) The sum of $250,000 in recurring funds is appropriated from the Department of Community Affairs' Grants and Donations Trust Fund to support the Century Commission for a Sustainable Florida pursuant to s. 163.3247, Florida Statutes.

Section 13. This act shall take effect July 1, 2006.